

CHAPTER 89 - VOCATIONAL REHABILITATION

SUBCHAPTER 89A - GENERAL INFORMATION

SECTION .0100 - INFORMATION REGARDING RULES

10A NCAC 89A .0101 RULES IN THIS CHAPTER

The rules in this Chapter govern the provision of services by the Division of Vocational Rehabilitation Services of the Department of Health and Human Services under the Rehabilitation Act of 1973, Public Law 93-112, as amended; G.S. 143-545, 143-546, and 143-547; G.S. 168-1 through 168-23; and G.S. 168A-1 through 168A-12.

History Note: Authority G.S. 143-545; 143-546; 143-547; 143B-10;
Eff. February 1, 1976;
Amended Eff. April 1, 1990; April 1, 1988;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89A .0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

- (1) "Acceptance for services" means that the priority category to which an eligible individual is assigned is being served by the Division.
- (2) "Application date" means the date that a client completes and signs an application for services with the Division.
- (3) "Appropriate mode of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated including but not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.
- (4) "Designated State Agency" or "State Agency" means the sole state agency designated per federal regulations to administer or supervise the local administration of the State Plan for Vocational Rehabilitation Services. In North Carolina, it is the Department of Health and Human Services.
- (5) "Client" means an individual who has applied for or is receiving services from the Division.
- (6) "Designated State Unit" means the state vocational rehabilitation division that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency.
- (7) "Division" means the Division of Vocational Rehabilitation Services of the Department of Health and Human Services.
- (8) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (9) "Division's Fixed Rate" means the rate that the Division will pay for clients to receive training services.
 - (a) The Division's fixed rate for post-secondary, graduate, professional and summer school is determined by calculating the median rate for tuition at the 16 campus public University system as approved by the North Carolina General Assembly in October 2001;
 - (b) The Division's fixed rate for the community college system is the approved rate for the 58 community college system as approved by the North Carolina General Assembly in October 2001.
- (10) "Division's Modification Review Committee" means a committee of Division staff from the State Office appointed by the Division Director and chaired by the Chief of Operations to review for approval or disapproval:
 - (a) amounts for residence or job site modifications that exceed standard amounts specified in 10A NCAC 89C .0316; and
 - (b) purchase of vehicles as set forth in 10A NCAC 89C .0316.
- (11) "Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements under 34 C.F.R 361.42(a).

- (12) "Extended period of time" means that the individual will require at least nine months to complete the services on the Individualized Plan for Employment (IPE) or will require one of the following services permanently in order to accomplish the individual's job choice and maintain employment:
- (a) Personal Assistance Services;
 - (b) Rehabilitation Technology;
 - (c) Medical equipment limited to wheelchairs, prosthesis, hearing aids and orthotics prescribed due to seriously limited functional capacity areas; or
 - (d) Extended Services.
- The required minimum of nine months does not include the standard amount of time required to complete a post-secondary training curriculum, but does include extra time required to complete the training curriculum due to disability related reasons.
- (13) "Extended Services" means ongoing support services that are needed to maintain an individual with a most significant disability in supported employment. These services are provided by a State agency, a private nonprofit organization, employer, or other resource from funds other than funds received by the designated State unit to provide supported employment training. Extended Services begin after the individual has made the transition from support provided by the designated State unit. Extended Services also includes services required by individuals with a most significant disability who received work adjustment and job coaching where a supported employment vendor was not available.
- (14) "Functional Capacity Areas" means the areas of ability which are impacted by an individual's disability and used to determine serious limitations to employment for an eligible individual with a disability. For the purposes of this Section:
- (a) "Communication" means the ability to use, give and receive information.
 - (b) "Interpersonal skills" means the ability to establish and maintain interactions with others.
 - (c) "Mobility" means the ability to move from place to place.
 - (d) "Self-care" means the ability to plan and perform activities of daily living.
 - (e) "Self direction" means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to self-care, socialization, and working independently.
 - (f) "Work skills" means the ability to learn and perform work functions.
 - (g) "Work Tolerance" means the ability to sustain the required level of work function.
- (15) "Individual with a "significant disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
- (16) "Individual with a most significant disability" means an individual with a significant disability who meets all aspects of the definition for significant disability, and whose impairment seriously limits three or more functional capacity areas in terms of an employment outcome.
- (17) "Individualized Plan for Employment" (IPE) means a written document prepared on forms provided by the designated state unit for each eligible individual accepted for services which outlines what is required to achieve an employment outcome.
- (18) "Intercurrent illness" means an acute medical condition that arises during the rehabilitation process and constitutes a barrier to the achievement of an employment outcome.
- (19) "Multiple services" means two or more primary services.
- (20) "Optional fees" are fees charged to curriculum and continuing education students for items not covered by tuition and registration fees. Optional fees include:
- (a) Specific fees. Fees charged to students for items required for individual courses that are considered to be in addition to normal supplies and materials the college provides for students such as tools, uniforms, insurance or certification fees.
 - (b) Student activity fee. A fee charged to students to support student activities. The student activity fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.
 - (c) Computer use and technology fee. A fee charged to students to support the procurement, operations and repair of computers and other institutional technology including supplies and materials that accompany use of the technology. The fee shall not exceed the maximum set by the State Board of Community Colleges effective for the fall 2001 semester.
 - (d) Parking fee. A fee charged to a student for use of the college's parking facilities.
- (21) "Order of Selection" means the priority system under which the Division provides vocational rehabilitation services to eligible individuals with disabilities when sufficient resources are not available for the Division to serve all eligible individuals with disabilities.

- (22) "Order of Selection – Established" means that the order of selection priority system has been approved by the Rehabilitation Services Administration and is a part of the Division's State Plan.
- (23) "Order of Selection – Implemented" means that the Division Director has determined that the Division does not have sufficient resources to provide services to all eligible individuals. During implementation all eligible individuals within a priority category may not receive services.
- (24) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into full or permanent remission.
- (25) "Permanent functional limitation" means restrictions in activity or function related to employment imposed by the disability that:
- (a) is not likely to be corrected through surgical intervention or medical treatment; and
 - (b) will require on-going treatment because impediments related to the disability will not be removed through the provision of physical and mental restoration services.
- (26) "Personal Assistance Services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.
- (27) "Primary Services" means any one of the following services:
- (a) Physical and mental restoration services: Diagnosis and treatment services of impairments excluding treatment of intercurrent illnesses.
 - (b) Counseling and guidance: Counseling and guidance that addresses separate and specific objectives with documentation of regular appointments and progress towards objectives distinct from the general counseling relationship that exists between the rehabilitation counselor and the eligible individual throughout the rehabilitation process.
 - (c) Vocational and other training: Personal and vocational adjustment training, post-secondary, and on-the-job training.
 - (d) Job Related Services: Job search, placement assistance, job retention services, follow-up services, and follow-along services.
 - (e) Rehabilitation Technology: Rehabilitation engineering, assistive technology devices, and assistive technology services.
- (28) "Priority category" means the order in which eligible individuals with disabilities will be served. These categories are based on refinement of the three criteria in the definition of "individual with a significant disability".
- (29) "Post-employment services" means one or more services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's abilities, capabilities, and interests.
- (30) "Rehabilitation technology" means services that systematically apply technologies, engineering methodologies, or scientific principles to meet the need of and address the barriers confronted by an eligible individual with a disability. Rehabilitation technology includes telecommunication, sensory, and other technological aids and devices.
- (31) "Seriously limits" means that due to a physical or mental impairment, one or more of an eligible individual's functional capacity areas is restricted to the degree that the individual requires accommodations not routinely made for other individuals or interventions that cannot be easily achieved, and that will be required permanently in order for the individual to obtain and maintain successful employment.
- (32) "State Plan" means the Plan for vocational rehabilitation services submitted by the Division and approved by the Rehabilitation Services Administration.
- (33) "Transferable work skills" means skills, educational level, talents, abilities, and knowledge that will allow employment consistent with the individual's strengths, resources, priorities, concerns, capabilities, interest and informed choice.
- (34) "Waiting list" means a list of eligible individuals that establishes the order in which these individuals will be provided services once resources are available if the Division has implemented an Order of Selection. Individuals are placed on the list after eligibility for services has been determined by their priority category and date of application.

The section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the section of the Public Law so incorporated may be obtained at no cost from the Division.

History Note: Authority G.S. 143-545.1; 150B-21.6; P.L. 102-569, s. 7(15); s. 101(a)(5)(A);
Eff. February 1, 1976;
Amended Eff. February 1, 1996; October 1, 1994; April 1, 1988;
Temporary Amendment Eff. May 1, 2002; July 3, 2001;
Amended Eff. August 1, 2002;
Temporary Amendment Eff. January 26, 2003;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SUBCHAPTER 89B - PROCEDURE

SECTION .0100 - RULE-MAKING PROCEDURES

10A NCAC 89B .0101 PURPOSE AND SCOPE

- (a) The purpose of Rules .0101 through .0108 of this Section is to set forth the Division of Vocational Rehabilitation Services' procedures for rule-making hearings and declaratory rulings.
- (b) The procedures in these Rules shall be followed by persons wishing to submit comments, written or oral, at rule-making hearings, by persons requesting additional information regarding proposed or adopted rules, and by persons requesting declaratory rulings.
- (c) As used in these rules, the term "rule" has the meaning specified in G.S. 150B-2(8a) and includes the amendment or repeal of a prior rule as well as the adoption of a new rule.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11;
Eff. February 1, 1976;
Amended Eff. April 1, 1988;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0102 PETITIONS

- (a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Division Director shall address the petition to: A.P.A. Coordinator, Division of Vocational Rehabilitation Services, 2801 Mail Service Center, Raleigh, North Carolina 27699-2801.
- (b) The petition shall contain the following information:
- (1) either a draft of the proposed rule or a summary of its contents and the statutory authority for the Division Director to promulgate the rule;
 - (2) reason for the proposal;
 - (3) effect of existing rules;
 - (4) any data supporting the proposal;
 - (5) the effect of the proposed rule on existing practices in the area involved, including cost factors;
 - (6) names and addresses, if known, of those most likely to be affected by the proposed rule; and
 - (7) name and address of the petitioner.
- (c) The Division Director shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The Division Director shall consider all the contents of the petition, plus any additional information deemed relevant.
- (d) The Division Director shall render a final decision on the petition within 30 days of submission of the petition. If the decision is to deny the petition, the petitioner shall be notified in writing and provided the reasons for the denial. Denial of the petition shall be considered a final agency decision as specified in G.S. 150B-16. If the decision is to approve the petition, rule-making proceedings shall be initiated in accordance with the rules in this Section.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; 150B-16;
Eff. February 1, 1976;
Amended Eff. April 1, 1988; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0103 NOTICE

- (a) When a rule-making hearing is scheduled, in response to a petition or otherwise, the Division shall give notice of a public hearing. The notice shall meet the requirements of G.S. 150B-12.
- (b) Persons desiring information in addition to that provided in a particular rule-making notice shall contact the Division's A.P.A. Coordinator or other person specified in the hearing notice according to the directions in the notice.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; 150B-12; Eff. February 1, 1976; Amended Eff. April 1, 1988; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0104 HEARINGS

- (a) Oral Presentations. Oral presentations shall not exceed ten minutes unless, upon request either before or at the hearing, the hearing officer grants an extension of time for good cause.
- (b) Written Submissions.
- (1) Any person may file a written submission containing data, comments, or arguments within the 30-day period that the hearing record is open for written comments. The deadline for written submissions shall be stated in the hearing notice.
 - (2) The written submission shall clearly state the proposed rule to which the comments are addressed and shall also include the name and address of the person submitting it. Written submissions shall be sent to the person and address specified in the hearing notice.
- (c) Management of Hearing. The hearing officer shall have complete control of the hearing, including:
- (1) the responsibility of having a record made of the hearing,
 - (2) extension of any time allotments,
 - (3) recognition of speakers,
 - (4) elimination of repetitious presentations, and
 - (5) general management of the hearing.
- (d) Fair Opportunity to Present Views. The hearing officer shall insure that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; 150B-12; Eff. February 1, 1976; Amended Eff. April 1, 1990; April 1, 1988; October 20, 1979; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0105 JUSTIFICATION OF RULE-MAKING DECISION

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; 150B-12; Eff. February 1, 1976; Amended Eff. April 1, 1990; April 1, 1988; October 20, 1979; Expired Eff. April 1, 2016 pursuant to G.S. 150B-21.3A.

10A NCAC 89B .0106 RECORD OF RULE-MAKING HEARINGS

A record of all rule-making hearings shall be maintained by the office of the Division's A.P.A. Coordinator. The record shall be available for public inspection during regular office hours and shall include:

- (1) any petitions related to the hearing,
- (2) the hearing notice,
- (3) all written memoranda and information submitted,
- (4) a tape recording or transcript of the oral hearing,
- (5) any statement of reasons issued to an interested person according to Rule .0105 of this Section, and
- (6) a final draft of the rule.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; Eff. February 1, 1976; Amended Eff. April 1, 1990; April 1, 1988; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0107 FEES

Except when a statute provides otherwise, the Division may charge a fee to cover the costs of meeting requests for information related to the rule-making hearing.

History Note: Authority G.S. 12-3.1(c); 143-545; 143-546; 143B-10(j)(2); 150B-11; Eff. February 1, 1976; Amended Eff. April 1, 1988; October 20, 1979; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0108 DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be by written petition and shall be submitted to:

A.P.A. Coordinator
Division of Vocational Rehabilitation Services
805 Ruggles Drive
2801 Mail Service Center
Raleigh, North Carolina 27699-2801

(b) Every request for a declaratory ruling shall include the following information:

- (1) the name, address, and telephone number of the petitioner;
- (2) the statute, rule, or order to which the petition relates;
- (3) a concise statement of the reasons why the petitioner is aggrieved by the rule, statute, or order, or its potential application to the petitioner; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the Director believes for good cause that the issuance of a declaratory ruling is undesirable, the Director may decline to issue one. In such cases, the Director shall notify the petitioner in writing of the decision stating the reasons for the denial of a declaratory ruling. The Director may decline to issue a declaratory ruling in the following specific circumstances:

- (1) if the request for a declaratory ruling addresses a situation or facts similar to those specifically considered at the rule-making hearing and is found in the rule-making record;
- (2) if the petitioner cannot show that the circumstances are so changed since adoption of the rule that such a ruling would be warranted; or
- (3) if the circumstances stated in the request indicate that there is a factual dispute and a contested case hearing would be more appropriate.

(d) When issuing a declaratory ruling is deemed appropriate, the Director shall issue the ruling within 60 days of receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be deemed appropriate by the Director in a particular case.

(f) The Director may notify persons who might be affected by the ruling that they may submit written comments or make oral presentations at a scheduled hearing.

(g) A record of all declaratory ruling proceedings shall be maintained by the Division's A.P.A. Coordinator and shall be available for inspection during regular business hours. This record shall contain:

- (1) the original request,
- (2) all written memoranda and information submitted,
- (3) a tape recording or transcript of any oral hearing, and
- (4) a statement of the ruling or the reasons for refusing to issue a ruling.

History Note: Authority G.S. 143-545; 143-546; 143B-10(j)(2); 150B-11; 150B-17; Eff. February 1, 1976; Amended Eff. April 1, 1990; April 1, 1988; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0200 - CONTESTED CASES: ADMINISTRATIVE REVIEWS: APPEALS HEARINGS

10A NCAC 89B .0201 APPLICABILITY OF RULES

Except for administrative reviews, mediation, and appeals to be conducted according to the provisions of Rules .0202 through .0228 of this Section, appeals concerning the administration of the rules in this Chapter shall be filed and conducted in accordance with G.S. 150B and 10A NCAC 01.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s.102 (c); Eff. February 1, 1976; Amended Eff. July 1, 2000; September 1, 1989; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0202 WRITTEN INFORMATION FOR APPLICANTS AND CLIENTS

(a) All applicants for and clients receiving vocational rehabilitation services shall be informed of the opportunities for an administrative review, mediation and an appeal available under Section 102(c) of the Rehabilitation Act and Rules .0202 through .0228 of this Section.

(b) Written information shall be provided to all applicants and clients informing them:

- (1) of their right to an appeals hearing when they are dissatisfied with any determinations made by the division concerning the furnishing or denial of services;
- (2) that they have the option of seeking resolution of the issue through an administrative review prior to an appeals hearing;
- (3) that mediation may be available to resolve their problems if the Division agrees to it;
- (4) that the rehabilitation counselor, rehabilitation coordinator or other designated staff of the division will assist them in preparation of the written request for an administrative review, mediation, or appeal;
- (5) of the name and address of the appropriate regional director to whom the request shall be submitted; and
- (6) that they may receive assistance with the resolution of their problems through the Client Assistance Program.

(c) The notifications required in Paragraph (b) of this Rule shall be provided in writing:

- (1) at the time an individual applies for services;
- (2) at the time the individualized plan for employment for the individual is developed; and
- (3) upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s.102 (c); Eff. February 1, 1976; Amended Eff. July 1, 2000; September 1, 1989; October 20, 1979; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0203 REQUEST FOR ADMINISTRATIVE REVIEW AND APPEALS HEARING

(a) When any applicant for or client receiving vocational rehabilitation services wishes to request an administrative review, mediation, and an appeals hearing or only an appeals hearing, the individual shall submit a written request to the appropriate regional director of the Division.

(b) The request shall indicate if the individual is requesting:

- (1) an administrative review, mediation, and an appeals hearing to be scheduled concurrently;
- (2) an administrative review and an appeals hearing to be scheduled concurrently; or
- (3) only an appeals hearing.

(c) The request shall contain the following information:

- (1) the name, address and telephone number of the applicant or client; and
- (2) a concise statement of the determination(s) made by the rehabilitation staff for which an administrative review, mediation, and appeals hearing or only the appeals hearing is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) The Division shall not suspend, reduce, or terminate services being provided to a client under a written individualized plan for employment (IPE) pending final resolution of the issue through mediation, an appeals hearing, or an administrative review unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. February 1, 1976; Amended Eff. July 1, 2000; October 1, 1994; September 1, 1989; October 20, 1979; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0204 DIVISION ACTIONS IN RESPONSE TO REQUEST

(a) Upon receipt of a request for an appeals hearing, the regional director shall immediately forward the original request to the Division's Chief of Operations who will arrange for the provision of information about the possibility of mediation to the individual and the appointment of a hearing officer to conduct the appeals hearing.

(b) If the individual has requested an administrative review in addition to an appeals hearing, the regional director shall:

- (1) make a decision to conduct the administrative review himself or herself or appoint a designee to conduct the administrative review who:
 - (A) has had no previous involvement in the issues currently in controversy;
 - (B) can conduct the administrative review in an unbiased way; and
 - (C) has a broad working knowledge of the Division's rules, federal regulations governing the program, and the State Plan for Vocational Rehabilitation Services or Independent Living Services (as appropriate); and
- (2) proceed with, or direct the designee to proceed with, an administrative review according to the provisions of Rules .0205, .0208, and .0209 of this Section.

(c) The regional director shall send the applicant or client written acknowledgment of receipt of the request and inform the individual that additional information will be sent regarding the possibility of mediation and the administrative review and appeals hearing or only the appeals hearing.

(d) The regional director shall provide the Chief of Operations and the Client Assistance Program (if the Client Assistance Program is assisting the individual with the case) with a copy of the request and the response to the request.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. February 1, 1976; Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0205 SCHEDULING AND NOTICE OF ADMINISTRATIVE REVIEW

(a) If an administrative review is to be conducted, the regional director or designee shall:

- (1) set a date, time and place for the administrative review;
- (2) send written notification by certified mail to the applicant or client and the individual's parent, guardian or representative, as appropriate, of the date, time and place for the administrative review at least five days prior to the administrative review;
- (3) advise the applicant or client in the written notice that a hearing officer will be appointed by the Division to conduct a hearing if the matter is not resolved in the administrative review and that the applicant or client will also receive additional information regarding mediation if mediation has been requested and a written notice from the hearing officer regarding the formal appeals hearing which will be held after the administrative review and mediation; and
- (4) notify the Director of the Client Assistance Program (CAP) and other individuals to be involved in the administrative review of the request and the date, time and place for the administrative review. This notification may be by phone or in writing.

(b) Prior to the administrative review, the regional director or designee shall review all previous decisions and casework related to the applicant or client and seek whatever consultation, explanation, documentation, or other information that is deemed necessary, utilizing the Division's CAP Director as appropriate.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. February 1, 1976; Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0206 APPOINTMENT OF HEARING OFFICER AND MEDIATOR

Upon receipt of the applicant's or client's request for mediation and an appeals hearing or only an appeals hearing from the regional director, the Chief of Operations shall arrange for the Coordinator of Rules and Policy Development to appoint a qualified mediator if mediation has been requested and an impartial hearing officer. The hearing officer shall be selected on a random basis without replacement from the pool of persons qualified as defined in Section 7 (16) of the Rehabilitation Act of 1973, 29 U.S.C. Section 720, et.seq., as amended.

History Note: Authority G. S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. February 1, 1976;
Amended Eff. July 1, 2000; April 1, 1997; October 1, 1994; September 1, 1989; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0207 SCHEDULING AND NOTICE OF MEDIATION AND APPEALS HEARING

- (a) If mediation is agreed upon, the mediation shall take place prior to the appeals hearing and shall be conducted according to Rule .0210 of this Section.
- (b) The hearing officer shall schedule the formal appeals hearing, to be held within 45 days of receipt of the original request by the applicant or client as described in Rule .0203 of this Section unless the Coordinator of Rules and Policy Development has extended the time for the hearing for a specific period of time upon written agreement of both parties or the hearing officer grants an extension under Subparagraph (d)(4) of this Rule.
- (c) The hearing officer shall provide the applicant or client and the division written notice of the date, time and place of the hearing and the issue(s) to be considered at least 10 days prior to the hearing. A copy of the notice shall be sent to the Client Assistance Program if CAP is involved in the case.
- (d) The notice shall inform the applicant or client and the division:
- (1) of the procedures to be followed in the hearing;
 - (2) of the particular sections of the statutes, federal regulations, state rules, and state plan involved;
 - (3) of the rights of the applicant or client as specified in 34 C.F.R. 361.57(b)(1) through (b)(4);
 - (4) that the hearing officer shall extend the time for the hearing if the parties jointly agree to a specific extension of time and submit a written statement to that effect to the hearing officer; and
 - (5) that the hearing may be cancelled if the matter is resolved in an administrative review or through mediation.
- (e) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);
Eff. February 1, 1976;
Amended Eff. July 1, 2000; September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0208 ADMINISTRATIVE REVIEW

- (a) Within 15 days of the original request for an administrative review by the applicant or client, the regional director or designee shall hold the administrative review with the applicant or client; the individual's parent, guardian or representative, as appropriate; the CAP Director, as appropriate; and other individuals deemed necessary by the regional director or designee.
- (b) Within five working days of the administrative review, the regional director or designee shall make a decision and notify the applicant or client and others using the following procedures:
- (1) compile a written report of the administrative review outlining the purposes of the administrative review, the participants, the decision that was reached, and the rationale for the decision;
 - (2) send the written report containing the decision to the applicant or client by certified mail with return receipt requested, with a copy being placed in the individual's official case record, and copies being forwarded to the Chief of Operations and the CAP director if CAP is involved; and
 - (3) provide instructions to the applicant or client of steps that may be taken in response to the decision and the deadline for the responses. A form indicating agreement with the decision and requesting that the hearing be cancelled shall be included for the applicant's or client's signature if the individual agrees with the decision.
- (c) In situations where the issue currently in controversy involves action taken by the central office of the Division, the Chief of Operations or a designee of the Chief of Operations shall be responsible for the duties related to the administrative review that are prescribed for the regional director in these Rules.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);
Eff. February 1, 1976;
Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0209 RESPONSE TO ADMINISTRATIVE REVIEW DECISION

- (a) If the applicant or client is satisfied with the decision resulting from the administrative review, the individual shall sign the form described in Rule .0208(b)(3) of this Section and submit it to the regional director within five days of receipt of the decision. The regional director shall inform the Chief of Operations of the request to cancel the appeals hearing immediately and forward the form to the Chief of Operations who shall submit it to the hearing officer.
- (b) If the hearing officer does not receive a written request from the applicant or client that the hearing be cancelled, the hearing shall be conducted as scheduled unless negotiations produce a settlement that is satisfactory to both parties prior to the hearing.
- (c) If the hearing is cancelled, the hearing officer shall send the applicant or client and the Division written notice of the cancellation in the same manner as required for notice of the hearing in Rule .0207(e) of this Section. A copy of the notice of cancellation shall be sent to the Client Assistance Program if CAP is involved.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);
Eff. February 1, 1976;
Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0210 MEDIATION

- (a) If both parties agree to mediation, the mediation shall take place prior to the appeals hearing.
- (b) Mediation shall not be used to deny or delay an individual's right to speedy complaint resolution. The mediation shall be completed in a period that also allows for convening of an appeals hearing after mediation within the 45-day time required under 34 C.F.R. 361.57(b) unless both parties sign a written agreement for a specific extension of time.
- (c) An individual to conduct the mediation shall be selected from a list of qualified and impartial mediators that is maintained by the Division. Individuals on the list of qualified mediators shall:
 - (1) be certified by the N. C. Dispute Resolution Commission or approved by the Mediation Network of North Carolina; and
 - (2) be knowledgeable regarding the laws, Federal regulations and State rules governing the provision of vocational rehabilitation and independent living services.
- (d) Each mediation session shall be scheduled in a timely manner and held in a location that is convenient to the parties involved.
- (e) The Division shall bear the cost of the mediation.
- (f) Parties involved shall sign a confidentiality pledge prior to the process indicating that discussions which occur during the mediation process shall be confidential and may not be used as evidence in any subsequent appeals hearing or civil proceeding. No evidence that is otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.
- (g) If an agreement is reached during mediation, it shall be in writing and signed by both parties.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);
Eff. February 1, 1976;
Amended Eff. July 1, 2000; April 1, 1997; September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0211 PROCEDURES GOVERNING HEARING

The appeals hearing shall be conducted according to the provisions of 34 C.F.R. 361.57(b)(1) through (b)(3) and (b)(12) and according to Rules .0212 through .0222 and Rule .0225 of this Section.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);
Eff. February 1, 1976;
Amended Eff. July 1, 2000; September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0212 VENUE

- (a) The appeals hearing shall be held in the county of residence in this State of the applicant or client.
- (b) Any party desiring a change of venue shall file a written motion for a change of venue with the hearing officer and serve copies of that motion on all other parties at least seven days prior to the date for which the hearing is set.
- (c) The motion shall include the following information:
 - (1) the name, address, and telephone number of the movant;

- (2) identification by the case name and docket number of the proceeding for which the change is sought;
 - (3) the time, date, and place for which the hearing is scheduled;
 - (4) the county in which the party requests that the hearing be held;
 - (5) a statement of the requested change, including the names and addresses of any witnesses whose convenience represents the basis for the request; and
 - (6) any other factors that should be considered in ruling on the request.
- (d) Any party may object to a motion for a change of venue by filing a written notice of objection with the hearing officer within three days after receipt of the motion and serving copies of the notice of objection on all other parties. The notice of objection shall state clearly the grounds for the objection.
- (e) The hearing officer shall determine whether a change of venue is appropriate and shall issue an order granting or denying the motion. The order shall state the reasons for the decision. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48;
 Eff. February 1, 1976;
 Amended Eff. September 1, 1989;
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0213 DISCOVERY

- (a) Parties in appeals hearings shall exchange information voluntarily, seek access to public documents as provided by law, and exhaust other informal means of obtaining discoverable material.
- (b) Within 15 days after receipt of a request for discovery or within such other time limit as the hearing officer may set, the party from whom discovery is requested shall either:
- (1) provide the requested material or access to that material to the discovering party;
 - (2) provide a schedule for compliance with the request for discovery; or
 - (3) file a written motion with the hearing officer for relief from the request for discovery.
- (c) Any dispute regarding discovery shall be referred to the hearing officer for resolution. The hearing officer shall issue an order resolving the dispute and containing the reasons for the ruling. Copies of the order shall be served on all parties.

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48;
 Eff. February 1, 1976;
 Amended Eff. September 1, 1989;
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0214 PRE-HEARING CONFERENCE

- (a) Upon notice to all parties, the hearing officer may instruct the parties to participate in a pre-hearing conference.
- (b) The conference shall be informal in nature.
- (c) The conference shall be noted in the notice of hearing or in a subsequent notice if a conference is later determined to be necessary by the hearing officer.
- (d) The purpose of the conference will be to discuss:
- (1) the possibility of simplification of issues,
 - (2) stipulation of facts or findings,
 - (3) identification of areas where evidence will be needed,
 - (4) Indication of discovery, and
 - (5) any other matters which will reduce costs or save time or otherwise aid expeditious disposition of the case.

History Note: Authority G.S. 143-545A; 150B-1; 34 C.F.R. 361.48;
 Eff. February 1, 1976;
 Amended Eff. April 1, 1997; September 1, 1989;
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0215 SIMPLIFICATION OF ISSUES

The parties to the hearing may agree in advance to simplification of issues by:

- (1) eliminating issues to be contested at the hearing,
- (2) accepting the validity of certain proposed evidence,

- (3) accepting the findings in some other case with relevance to the case at hand, or
- (4) agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48;
Eff. February 1, 1976;
Amended Eff. September 1, 1989; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0216 EVIDENCE

- (a) Evidence to be admitted in the hearing shall be as specified in G.S. 150B-29, G.S. 150B-30, and G.S. 150B-31.
- (b) This adoption by reference is made under G.S. 150B-14(c).

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 150B-14(c); 150B-29; 150B-30; 150B-31;
34 C.F.R. 361.48;
Eff. February 1, 1976;
Amended Eff. September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0217 DISQUALIFICATION OF HEARING OFFICER

- (a) If at any time the hearing officer believes he or she cannot conduct the appeals hearing in a fair and impartial manner, the hearing officer shall submit to the Division staff member who appointed the hearing officer a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Division staff member who appointed the hearing officer shall inform all parties of the disqualification and the reasons therefor.
- (b) If a party to the case believes that the hearing officer of record cannot conduct the hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case.
- (c) When a hearing officer is disqualified or it is impracticable for the hearing officer to proceed with the hearing, another hearing officer shall be assigned by the Division staff member who appointed the hearing officer to proceed with the case. However, if it is shown to the Division staff member who appointed the hearing officer or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:
 - (1) the case shall be dismissed without prejudice; or
 - (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Division staff member who appointed the hearing officer shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

History Note: Authority G.S. 143-545A; 150B-1; 34 C.F.R. 361.48;
Eff. September 1, 1989;
Amended Eff. April 1, 1997;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0218 EX PARTE COMMUNICATIONS

- (a) Ex parte communications in the appeals hearing shall be governed by G.S. 150B-35.
- (b) This adoption by reference is made under G.S. 150B-14(c).

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 150B-14(c); 150B-35; 34 C.F.R. 361.48;
Eff. September 1, 1989;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0219 OATH

No person may testify or present arguments, views, or data orally at the hearing before being put under oath or affirmation.

History Note: Authority G.S. 143-546; 143B-10(j); 150B-11; 34 C.F.R. 361.48;

Eff. September 1, 1989;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0220 CONDUCT OF HEARING

- (a) The hearing officer shall have control over the hearing, including:
- (1) the responsibility of having a record made of the hearing;
 - (2) the administration of oaths and affirmations;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations; and
 - (5) general management of the hearing.
- (b) The hearing officer shall conduct the hearing in a manner that will provide the applicant or client the rights required by 34 C.F.R. 361.57(b)(3).
- (c) The hearing shall not be open to the public.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. September 1, 1989;

Amended Eff. July 1, 2000;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0221 FAILURE TO APPEAR

- (a) If the applicant or client fails to appear at the hearing and does not have a representative present, the hearing officer shall cancel the hearing.
- (b) The applicant or client may submit a written request for rescheduling of the hearing to the Division staff member who appointed the hearing officer. The request shall provide an explanation of the individual's failure to appear at the hearing or to have a representative present. The Division staff member who appointed the hearing officer may instruct the hearing officer to reschedule the hearing upon a showing of good cause by the applicant or client. "Good cause" may include death or incapacitating illness of the party or an immediate family member of the party, the party's representative, or the party's attorney; involvement in an accident that prevents timely notification of the hearing officer; or failure to receive proper notice of the hearing.

History Note: Authority G.S. 143-545A; 150B-1; 34 C.F.R. 361.48;

Eff. September 1, 1989;

Amended Eff. April 1, 1997;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0222 HEARING OFFICER'S DECISION

Following the hearing, the hearing officer shall make and issue a decision as specified in 34 C.F.R. 361.57(b)(4). The decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c);

Eff. September 1, 1989;

Amended Eff. July 1, 2000;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0223 SECRETARY'S REVIEW AND FINAL DECISION

- (a) Either party may request an impartial review of the hearing officer's decision according to the standards in Paragraph (d) of this Rule by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.
- (b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.
- (c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102 (c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by

certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) The reviewing official's review shall be based on the following standards of review:

- (1) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?
- (2) Is the hearing officer's decision supported by substantial evidence and consistent with facts and applicable federal and state policy?
- (3) In reaching the decision, has the hearing officer given appropriate and adequate interpretation to such factors as:
 - (A) the federal statute and regulations as they apply to specific issue(s) in question;
 - (B) the state plan as it applies to the specific issue(s) in question;
 - (C) division rules as they apply to the specific issue(s) in question;
 - (D) key portions of conflicting testimony;
 - (E) division options in the delivery of services where such options are permissible under the federal statute; and
 - (F) restrictions in the federal statute with regard to such supportive services as maintenance and transportation.

(e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 days of the date the request for a review of the hearing officer's decision was received. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102 (c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(f) The hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

(g) The division director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the Chief of Operations, the CAP director, the regional director, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

History Note: Authority G.S. 143-545.1; 143-546.1; 150B-1; P.L. 105-220; Eff. September 1, 1989; Amended Eff. April 1, 1997; October 1, 1994; Temporary Amendment Eff. March 15, 1999; Amended Eff. July 1, 2000; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0224 EXTENSIONS OF TIME

(a) Reasonable time extensions may be granted for the procedures in these Rules at the request of a party or at the request of both parties except for:

- (1) the time for continuation of services during mediation, an appeals hearing or an administrative review as specified in Rule .0203(d) of this Section;
- (2) the time for conducting the appeals hearing as specified in Rule .0207(b) of this Section which may be extended only as specified in Rule .0207(b) and (d)(4) of this Section;
- (3) the time for issuance of the written notice of the formal appeals hearing as specified in Rule .0207(c) of this Section;
- (4) the time to request a review of the hearing officer's decision as specified in Rule .0224(a) of this Section; and
- (5) the time for the reviewing official's issuance of a final decision as specified in Rule .0224(d) of this Section.

(b) When an extension of time is being granted by the person conducting the administrative review, mediation, or the hearing officer, consideration shall be given to the effect of the extension on deadlines for other steps in the administrative review, mediation, and appeals process.

History Note: Authority G.S. 143-546.1; 150B-1; 34 C.F.R. 361.57; P.L. 105-220, s. 102(c); Eff. September 1, 1989;

Amended Eff. July 1, 2000;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0225 RECORD

(a) The official records of appeals hearings shall be maintained in the central office of the Division.

(b) Any person wishing to examine a hearing record shall submit a written request to the Chief of Operations who shall have the record prepared for inspection, including the removal of any confidential material.

History Note: Authority G.S. 143-545A; 150B-1; 34 C.F.R. 361.48;

Eff. September 1, 1989;

Amended Eff. April 1, 1997;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0226 TRANSCRIPTS

Any person desiring a transcript of all or part of an appeals hearing shall contact the office of the Chief of Operations. A fee to cover the cost of preparing the transcript shall be charged, and the party may be required to pay the fee in advance of receipt of the transcript. The transcript may be edited to remove confidential material.

History Note: Authority G.S. 143-545A; 150B-1; 34 C.F.R. 361.48;

Eff. September 1, 1989;

Amended Eff. April 1, 1997;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89B .0227 CIVIL ACTION

Judicial review of decisions issued pursuant to Rules .0202 through .0225 of this Section shall be as specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

History Note: Authority G.S. 143-545.1; 143-546.1; 150B-1; P.L. 105-220;

Eff. September 1, 1989;

Temporary Amendment Eff. March 15, 1999;

Amended Eff. July 1, 2000;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SUBCHAPTER 89C - PROGRAM RULES

SECTION .0100 - GENERAL POLICIES

10A NCAC 89C .0101 ORGANIZATION AND ADMINISTRATION

10A NCAC 89C .0102 SERVICES TO THE BLIND

History Note: Authority G.S. 143-545; 143-546; 143B-10(j); 150B-14(c); 34 C.F.R. 361.5; 34 C.F.R. 361.6;

34 C.F.R. 361.10; 34 C.F.R. 361.19; 34 C.F.R. 361.24;

Eff. February 1, 1976;

Amended Eff. May 1, 1990;

Expired Eff. April 1, 2016 pursuant to G.S. 150B-21.3A.

10A NCAC 89C .0103 RATES OF PAYMENT

(a) Rules governing rates of payment for all purchases, vocational rehabilitation services, and current rates of payment may be reviewed 8 a.m. to 5 p.m., Monday through Friday, at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina or on the Division's internet site. Vendors providing any services authorized by the Division shall agree not to make any charge to, or accept payment from, the individual receiving services from the Division or the individual's family for such services unless the amount for such service charge or payment is previously known to and approved by the Division in accordance with Sections .0200 and .0300 of this Chapter.

(b) The Division's rate of payment for post secondary education, graduate, professional and summer school shall not exceed the Division's fixed rate charged for the public university and professional schools system and the rate charged

for the community college system for tuition and fees as approved by the North Carolina General Assembly October 2001.

(c) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer curriculums comparable to those offered through the community college system shall not exceed the rate for payment established for the community college system.

(d) The Division's rate of payment for proprietary for profit vocational and trade schools or other training programs that offer an accelerated or condensed curriculum or those training programs that offer training in areas not offered through the community college system shall not exceed the Division's fixed rate for the public university system per semester multiplied by two.

(e) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade program that does not operate on a semester system or has varying program lengths up to one year shall not exceed a prorated monthly rate based on the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(f) The Division's rate of payment for proprietary for profit vocational and trade schools and any other vocational or trade programs that does not operate on a semester system or has a varying program length that is twelve months or longer shall not exceed the Division's fixed rate for the public university system per semester multiplied by two and the Division's fixed rate for a session of summer school in the public university system multiplied by two.

(g) The Division's rate of payment for those individuals who are North Carolina residents and choose to attend training programs out-of-state, is limited to the Division's fixed rate specified in Paragraph (b) of this Rule.

(h) The Division's rate of payment for optional fees at the community college system shall not exceed the amount approved by the local community college boards.

(i) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Rule .0205, Paragraph (a)(9) of this Subchapter shall be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

(j) The Division's rate of payment for community rehabilitation programs approved for vendorship shall be determined as follows:

- (1) Community rehabilitation programs approved by the Division for outcome based payment shall be paid based upon the Division's established benchmark rate. A payment is made for each benefit or outcome achieved that the vendor contracts with the Division to provide. The benchmark rate is determined based on average cost of outcomes for fiscal years 1997, 1998, and 1999. These benchmark rates are published in DVR-Vol V fee schedule manual.
- (2) Community rehabilitation programs approved by the Division for fee for service shall be paid an hourly rate for providing the services authorized by the Division. The rate is established by the Division based on historical cost finding. The vendor shall be reimbursed based on the number of hours of actual services provided.
- (3) Any adjustments to the rate shall be determined by the Division based on availability of funds and shall not exceed 85 percent of the annual salary increases for state employees as awarded by the legislature.

History Note: Authority G.S. 143-545.1; 34 C.F.R. 361.50;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. April 1, 2007; August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0104 CONFIDENTIAL INFORMATION

The Division shall follow the standards and procedures for safeguarding confidential information outlined in 34 C.F.R. 361.49. This adoption by reference is made under G.S. 150B-14(c).

History Note: Authority G.S. 143-546; 150B-14(c); 34 C.F.R. 361.49;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0105 ADMINISTRATIVE REVIEWS AND FAIR APPEALS

Procedures governing administrative reviews and appeals hearings are codified in Subchapter 20B, Section .0200 of this Chapter.

*History Note: Authority G.S. 143-545; 143-546; 34 C.F.R. 361.48;
Eff. February 1, 1976;
Amended Eff. March 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89C .0106 CASE RECORD ON INDIVIDUAL

(a) The Division shall maintain a case record on each applicant and client. The case record contains material regarding the individual to allow Division staff to:

- (1) determine eligibility or ineligibility;
- (2) determine the need for extended evaluation to determine rehabilitation potential;
- (3) provide the basis for joint planning between the client and counselor in developing the client's individualized written rehabilitation program;
- (4) provide documentation of services rendered and the documentation of client progress towards achieving the vocational goal (going to work); and
- (5) provide the necessary documentation to meet federal reporting requirements.

(b) Case record material is confidential and shall not be released or disclosed except as outlined in 34 C.F.R. 361.49.

*History Note: Authority G.S. 143-546; 34 C.F.R. 361.39; 34 C.F.R. 361.49;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89C .0107 CLIENT INFORMATION FORMS

(a) The Division utilizes the forms specified in this Rule in its administration of the vocational rehabilitation program. Copies of the forms are available to the public upon written request to:

APA Coordinator
Division of Vocational Rehabilitation Services
805 Ruggles Drive
2801 Mail Service Center
Raleigh, North Carolina 27699-2801.

(b) Client Data Sheet. This form collects basic demographic information on the client (name, address, referral source, age, sex, social security number, public assistance status, etc.) as well as outlining the services being provided by the Division and the actions taken by the Division. This is the primary form used for initiating and updating the client data information with primary utilization being to meet the federal reporting requirements.

(c) Authorization of Services. This form is completed, forwarded to a vendor of services, and gives the vendor agency approval for the initiation of services.

(d) General Basic Medical Examination Record. This form is utilized to collect a record of the client or applicant's general health status and to meet federal requirements for such. It is completed by a medical doctor and becomes part of the client's record. The Division also utilizes, to some degree, variations of this basic form to provide specialty reports on specific disability types:

- (1) Medical Report Cardiac Disability,
- (2) Medical Report Visual Disability,
- (3) Medical Report Hearing Disability,
- (4) Physician's Report, and
- (5) Report of Dental Examination.

(e) Survey Interview. This form is the basic intake document of the Division and collects from the client or applicant basic demographic data (e.g., name, address, telephone, age, referral source, family information, earnings, vocational history, medical history, disability, military record, court record, etc.). The form is signed by the applicant or the applicant's guardian if the applicant is under age 18.

(f) Financial Statement. This form is utilized by the counselor to plan with the client the cost responsibility for certain services and to determine the extent to which client resources can be used in meeting the cost of the rehabilitation program.

(g) Certificate of Ineligibility. This form is directed to applicants or clients and advises them that they do not meet or no longer meet the criteria of eligibility for services. It also advises these individuals of their rights and remedies and the steps they should take to request an administrative review or hearing. It also states the Division's policy on nondiscrimination.

(h) Certificate of Eligibility. This form is directed to applicants or clients and advises them that they do meet the criteria of eligibility. It also advises them of the Division's policy on nondiscrimination.

(i) Individualized Written Rehabilitation Program. This form is directed to the eligible client and outlines the respective client's individualized rehabilitation program. It contains information regarding the types of services needed by the client to go to work, the objectives of the specific services, the evaluation criteria to measure success, the date to begin and complete the services, the client's eligibility for any comparable benefits, and the client's views of the program. The form also advises clients of their rights and remedies, their responsibilities, confidentiality, and annual progress review responsibilities. The form described in Paragraph (j) of this Rule is a continuation of this form.

(j) Addendum to the Individualized Written Rehabilitation Program. This form has several primary uses, including being a general utility, multi-purpose form. The primary use is to provide a mechanism for amending the individualized written rehabilitation program and keeping the client informed of the amendments. Other uses include the documentation of case closure, progress reports, post-employment services, review of ineligibility determinations, and annual reviews.

History Note: Authority G.S. 143-546; 150B-11(1);
Eff. February 1, 1976;
Amended Eff. May 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0108 HANDICAPPED DRIVERS AND PASSENGERS: PARKING PRIVILEGES

History Note: Authority G.S. 20-37.6(c); 143B-10;
Eff. October 20, 1979;
Amended Eff. May 1, 1990;
Expired Eff. April 1, 2016 pursuant to G.S. 150B-21.3A.

10A NCAC 89C .0109 RATES AND FEES FOR PURCHASERS OF SERVICES

The Division shall establish fees it charges for any services by determining the amount necessary to recoup all direct and indirect costs associated with the respective service. Direct costs are those that can be identified specifically with a particular service. Indirect costs are those that have been incurred for common or multiple services and cannot be readily identified with a specific service. Any fees assessed shall not be in conflict with the provisions regarding comparable benefits in 34 C.F.R. 361.44.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.44;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0200 - ELIGIBILITY

10A NCAC 89C .0201 ELIGIBILITY AND INELIGIBILITY

(a) Eligibility for vocational rehabilitation services is based only upon the criteria specified in 34 C.F.R. 361.42. A preliminary assessment that meets the requirements of 34 C.F.R. 361.42 shall be used in order to determine whether an individual is eligible for vocational rehabilitation services or whether an extended evaluation is necessary to make such a determination.

(b) If an extended evaluation is necessary it will meet the requirements of 34 C.F.R. 361.42.

(c) Determinations of eligibility, ineligibility, or the need for extended evaluation to determine vocational rehabilitation potential, shall meet the requirements of 34 C.F.R. 361.42. The vocational rehabilitation counselor shall make the appropriate determination and document it in writing and include it in the individual's casefolder.

(d) The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6.

History Note: Authority G.S. 143-545A; 143-546A; 150B-21.6; 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; March 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0202 PROCESSING REFERRALS AND APPLICANTS

(a) The Division shall maintain cooperative agreements with other public agencies and shall establish and maintain information and referral programs as required by 34 C.F.R. 361.37.

(b) Each rehabilitation counselor is assigned to a local office or vocational rehabilitation facility within a particular geographic area. Referrals may be made to the individual counselor, to the local community office, to a vocational rehabilitation facility, or to the state office of the Division. Information regarding referrals shall be forwarded to the appropriate counselor for processing. The counselor shall process the information regarding referrals as promptly as possible.

(c) The counselor shall contact all individuals referred and make a determination of eligibility, ineligibility, or the need for extended evaluation. The Division shall utilize any existing data and information available from the cooperating agencies to assure quick and equitable handling of referrals.

History Note: Authority G.S. 143-545A; 143-546A; 34 C.F.R. 361.22; 34 C.F.R. 361.23; 34 C.F.R. 361.37;
34 C.F.R. 361.41;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; March 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0203 APPLICANT NOTIFICATION

The Division shall provide written notification to all applicants for services at the time of application that an order of selection as set out in Section .0600 of this Subchapter will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.

History Note: Authority G.S. 143-545A; 143-546A; 34 C.F.R. 361.36; P.L. 102-569, s. 101(a)(5)(A);
Eff. February 1, 1976;
Amended Eff. July 1, 1998; October 1, 1994; March 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0204 CONSIDERATION OF COMPARABLE SERVICES AND BENEFITS

The Division shall determine whether any comparable services and benefits are available under any other program and utilize those services and benefits as required under 34 C.F.R. 361.47(b).

History Note: Authority G.S. 143-545; 143-546; 143B-10(j); 34 C.F.R. 361.19; 34 C.F.R. 361.47(b);
34 C.F.R. 361.56;
Eff. February 1, 1976;
Amended Eff. March 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206 of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services to clients eligible for services or to clients eligible for extended evaluation or trial work experiences:

- (1) physical and mental restoration;
- (2) maintenance;
- (3) transportation;
- (4) occupational license;
- (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;

- (6) services to members of the individual's family necessary to the adjustment or rehabilitation of the individual with disabilities;
- (7) rehabilitation technology including vehicular, home modifications, telecommunications, sensory, and other technological aids and devices;
- (8) post-employment services provided subsequent to the achievement of an employment outcome necessary to assist individuals with disabilities in maintaining employment (other than those services in Paragraph (d)(1) of this Rule which are provided without regard to financial need);
- (9) vocational and other training services, books, tools, and other training materials;
- (10) other goods and services expected to benefit an individual with disabilities in obtaining employment or achieving the individual's independent living goals;
- (11) non-assessment services for eligible individuals receiving vocational rehabilitation services through trial work experiences or extended evaluation; and
- (12) personal and vocational adjustment training and On-the-Job Training that does not conflict with Federal and State wage and hour laws.

(b) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Paragraph (a)(9) of this Rule shall be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.

(c) Physical and mental restoration as noted in Paragraph (a)(1) of this Rule shall only be provided to the extent that financial support is not available from a source other than the designated state unit such as through health insurance or a comparable service or benefit as defined in 34 CFR 361.6(b)(10).

(d) The financial needs test shall not apply as a condition for furnishing the following:

- (1) services exempt from the financial needs test under 34 C.F.R. 361.54;
- (2) foreign language interpreter/translator services for individuals who are unable to understand either verbal or written information presented by the Division;
- (3) any vocational rehabilitation service to individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act; and
- (4) all services and equipment provided by staff of the Division.
- (5) time-limited Division-sponsored internships with employers as a part of an individualized plan for employment made available to eligible individuals served through the NC Division of Vocational Rehabilitation Services Program. Division sponsorship for an internship described within this Paragraph will allow a rate of pay of at least minimum wage and will not exceed a period of four months unless an exception is granted by the Division's Chief of Policy based on the applicable policy. Pending available funding, Division sponsorship of these internships for clients as described in this Subparagraph is provided as a part of the ARRA plan and will expire on or before September 30, 2011, as determined by the Division Director.

(e) The Division shall grant an exception to the rate for tuition for post-secondary education specified in Rule .0119 of this Section when accommodations for the special training needs of individuals with significant disabilities are included in the tuition rate.

(f) Notwithstanding Paragraph (a) of this Rule, the following services are not subject to the financial needs test specified in Rule 0.0206 of Subchapter 89C for individuals being served through the NC Division of Vocational Rehabilitation Services Program:

- (1) Personal and Vocational Adjustment Training and On-the-Job Training that does not conflict with Federal and State wage and hour laws.

This Paragraph expires September 30, 2011.

History Note: Authority G.S. 143-545.1; 143-546.1; 150B-21.1B; 34 C.F.R. 361.40; 34 C.F.R. 361.41; 34 C.F.R. 361.47; 34 C.F.R. 364.59; P.L. 111.5; Eff. February 1, 1976; Amended Eff. February 1, 1996; October 1, 1994; March 1, 1990; Temporary Amendment Eff. January 26, 2003; May 1, 2002; Amended Eff. August 1, 2004; Emergency Amendment Eff. October 27, 2009; Temporary Amendment Eff. December 4, 2009; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0206 FINANCIAL NEEDS TEST

(a) A client's financial need shall be determined by application of the General Assembly's financial eligibility scale for non-medicaid medical programs which sets the limit of net annual income for families of various sizes and by consideration of other available assets that could be used to pay for the cost of rehabilitation services. The General Assembly's eligibility financial scale for non-medicaid programs is contained in the annual appropriation bill. In applying the General Assembly's financial eligibility scale, the Division shall follow the provisions of this Rule to determine net monthly income and family size. Financial information is obtained to determine the client's financial eligibility to receive services listed in Paragraph (a) of Rule .0205 of this Section. Financial information obtained may include check stubs, State and Federal income tax forms and other information to document income or other financial resources. If the client does not have check stubs or tax returns, the client shall complete a verification form signed by the client's last employer, the individual who supports the client, or the agency representative who processes the client's public support. Whenever the financial situation of the client is unclear or there is a question regarding the resources of the client, the Unit Manager or Facility Director shall be consulted for analysis or application of client financial information.

(b) The time period to be used as the basis for computing net monthly family income is the month prior to the planning of any service which is based on the individual's financial eligibility. Net monthly family income shall be recomputed at any time there is a change in the family's income but at least annually.

(c) A client's family shall include only the client if the client is not married and any of the following conditions apply:

- (1) The client is 23 years of age or older;
- (2) The client is a ward of the court;
- (3) The client is an emancipated minor;
- (4) The client is a veteran of the United States Armed Forces; or
- (5) The client is under 23 years of age and can produce a tax return from the year prior to application for services indicating self-support, or receipts, records for basic living expenses such as rent and utilities for a minimum of three consecutive months, pay stubs, or other information such as receipts of medical payments, payment of health insurance premiums, child care payment receipts, and legally mandated payments that indicate that he or she is independently self-supporting.

(d) A client's family shall include the client and the following persons living in the same household if the client is married:

- (1) the client's spouse;
- (2) the client's children under 23 years of age; or
- (3) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.

(e) A client's family shall include the client and the following persons living in the same household as the client if the client is less than 23 years of age and is not married or if the client is 23 years of age or older and is being claimed as a dependent by the parents for tax purposes regardless of place of residence:

- (1) the client's parents, not including step-parents;
- (2) siblings or half-siblings of the client, but not step-siblings, if the siblings are unmarried and less than 23 years of age;
- (3) siblings or half-siblings of the client, but not step-siblings, if the siblings are 23 years of age or older and have no income; and
- (4) other individuals related to the client by blood, marriage, or adoption if the other individuals have no income.

(f) Net monthly family income shall be computed by subtracting the deductions allowed in Paragraph (h) of this Rule from the gross monthly family income as computed according to Paragraph (g) of this Rule.

(g) Gross Monthly Family Income.

- (1) Gross monthly family income shall mean the combined cash income received by the client's family from the following sources:
 - (A) wages and salaries;
 - (B) earnings from self-employment;
 - (C) earnings from stocks, bonds, savings accounts, rentals, and all other investments;
 - (D) Social Security benefits and Supplemental Security Income benefits received by family members;
 - (E) public assistance benefits;
 - (F) retirement and pension payments;

- (G) Veterans Administration benefits; and
- (H) all other sources of cash income.
- (2) If the income received from any of the sources listed in Subparagraph (g)(l) of this Rule is not received on a monthly basis, the monthly pro rata share of the most recent receipt of the income shall be included in the computation.
- (3) Gross family income shall not include:
 - (A) income that children may earn from babysitting, lawn mowing, or other miscellaneous tasks;
 - (B) gifts;
 - (C) inheritances;
 - (D) life insurance proceeds;
 - (E) Social Security benefits and Supplemental Security Income benefits of the client.
- (h) Any of the following expenses, which are paid by a member of the client's family, shall be allowed as deductions in determining net monthly income:
 - (1) state, federal, Social Security, and Medicare taxes and any mandatory deductions for retirement contributions;
 - (2) medical and dental payments not covered by a third-party payer;
 - (3) health insurance premiums;
 - (4) disability related expenses, not covered by a third-party payor, paid for the client or a member of the client's family except for personal assistance expenses for those clients who require personal assistance services in order to achieve independent living;
 - (5) child care payments for any child in the family unit who is 14 years of age or younger and the parents or other adult members of the family unit are not able to care for the child;
 - (6) post-secondary training expenses for family members not to exceed the rate specified in Rule .0119(b) to (i) of this Section; and
 - (7) legally mandated payments such as alimony, child support or Social Security paybacks.
- (i) In addition to net monthly family income, other assets that are available to the client's family shall be considered in determining a client's financial need. Available assets shall mean the combined cash or property of the client's family members as determined by Paragraphs (c) - (e) of this Rule. The available assets which could be used to pay for the cost of rehabilitation services shall include:
 - (1) cash in checking or savings accounts which exceeds an amount three times the net monthly income allowed for the family size; and
 - (2) real property considering the following provisions:
 - (A) Real property, other than the family homesite, shall be considered if the fair market value less encumbrances exceeds twenty-five thousand dollars (\$25,000).
 - (B) The equity shall be determined by subtracting the amount owed on mortgages or liens from the purchase price or the fair market value, whichever is less.
 - (C) The family homesite for the purposes of this Rule shall be defined as the family's principle place of residence and includes real property, land, and buildings that are used for activities associated with occupancy of the dwelling as a living space for the family.
 - (D) Real property shall be regarded as an available asset to the extent that it can be converted to cash, either by sale or by use as collateral for a loan, in a timely manner to meet the cost of rehabilitation services.
 - (3) Gifts, inheritances, or life insurance proceeds which exceeds an amount three times the net monthly income allowed for the family size; and to the extent that it can be converted to cash in a timely manner to meet the cost of rehabilitation services.
- (j) Contributions available to the client's family shall be considered in determining a client's financial need. Contributions shall mean non-merit based scholarships, educational grants, community funds or other resources that the client has available to contribute to the rehabilitation program.
- (k) If the net monthly income of the client's family is greater than the amount allowed by the General Assembly's financial eligibility scale after allowable deductions as defined in Paragraph (g) of this Rule are applied, the client has excess income. The excess income, combined with the client family's available assets and contributions are considered to be excess resources that shall be applied to the cost of the client's rehabilitation. The Unit Manager or Facility Director shall approve the plan to apply excess resources to the cost of the client's rehabilitation.
- (l) When personal assistance services is a planned service for a client of the Independent Living program and the client's family is determined to have excess resources as defined in Paragraph (j) of this Rule, the client's financial contribution toward the cost of the personal assistance services shall be one-half the excess net monthly family income. The

counselor shall determine the amounts to be paid and the method of payment. The Unit Manager or Facility Director shall approve the payment plan.

(m) If there are extenuating circumstances that prohibit the client's application of the excess resources toward the cost of rehabilitation, the Division may waive the application of part or all of the excess resources toward the rehabilitation. Such circumstances may include the inability to sell property, the fact that the amount of funds would be so small that it would provide little help with the rehabilitation program, and the fact that the conversion of the excess resources may result in delay in proceeding with the rehabilitation program. Written approval of the Unit Manager or Facility Director shall be required for the waiver. Documentation of the particular circumstances shall be provided by the client and shall be maintained in the client's record.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.47;
Eff. February 1, 1976;
Amended Eff. April 1, 1999; March 1, 1990;
Temporary Amended Eff. January 26, 2003; May 1, 2002;
Amendment Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0300 - SCOPE AND NATURE OF SERVICES

10A NCAC 89C .0301 SCOPE; EVALUATION OF REHABILITATION POTENTIAL

(a) Pursuant to 34 C.F.R. 361.42(b), the Rules in this Section set forth the scope and nature of services provided by the Division that are required under 34 C.F.R. 361.42(a).

(b) Each applicant's rehabilitation potential shall be assessed through a diagnostic study. The assessment will consist of an evaluation, as appropriate, of pertinent medical, social, psychological, educational, and vocational factors and will serve as a basis for determining eligibility, ineligibility, the scope of services necessary for an eligible individual's rehabilitation, or the need for extended evaluation. Services under a plan of extended evaluation shall be provided only in those instances where there is a physical or mental disability that constitutes or results in a substantial handicap to employment for an individual, but there is an inability to determine that vocational rehabilitation services will benefit the individual in terms of employment. Services under a plan of extended evaluation may be provided for only 18 months.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; October 20, 1979l;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0302 COUNSELING, GUIDANCE, AND REFERRAL

The rehabilitation counselor shall help the client develop a realistic individualized written rehabilitation program leading to the objective of employment. The counselor shall provide counseling to clients having adjustment problems, emotional problems, or other personal problems which impede rehabilitation and their ability to work. The counselor shall use referrals to the extent necessary to help clients secure needed services from other agencies and shall advise clients and client applicants about the client assistance program (CAP).

History Note: Authority G.S. 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0303 PHYSICAL AND MENTAL RESTORATION SERVICES

Physical and mental restoration services may be provided only to those clients determined eligible for a program of rehabilitation services or for extended evaluation. Restoration services shall be provided to these individuals for the purpose of enhancing their employability by removing, improving, or lessening the handicapping problem. Restoration services which may be provided are:

- (1) medical or surgical treatment, or both;
- (2) psychiatric treatment;
- (3) hospitalization (inpatient and outpatient) and clinic services;
- (4) prosthetic and orthotic devices;

- (5) dental services;
- (6) nursing services;
- (7) physical therapy;
- (8) occupational therapy;
- (9) medically directed speech and hearing therapy;
- (10) convalescent, nursing, or rest home care;
- (11) drugs and supplies;
- (12) physical rehabilitation in a rehabilitation facility;
- (13) treatment of medical complications that are associated with, or arise from, the provision of physical restoration services; and
- (14) other medically related or medical rehabilitation services as indicated.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42; Eff. February 1, 1976; Amended Eff. May 1, 1990; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0304 VOCATIONAL AND OTHER TRAINING

(a) Vocational and other training may be provided only to those clients determined eligible for rehabilitation services or for extended evaluation. These services shall be provided only to extent necessary to achieve the job choice. Training shall be provided in licensed and approved public or private facilities as specified in 10 NCAC 20D .0207. The Division's funding for training expenses shall be as specified in Rule .0205 of this Subchapter.

(b) Vocational and other training may include on-the-job training; training at community rehabilitation programs; supported employment training; and postsecondary training. Postsecondary training may include:

- (1) vocational training at business schools, trade schools, community colleges, technical institutes, nonprofit schools, or proprietary schools, or
- (2) college or university training including college parallel programs at community colleges and graduate school.

(c) Vocational and other training services may be provided to clients who require these services in order to become employed and when direct job placement for a client with transferable work skills is not a suitable option due to disability-related issues. Specific criteria for sponsorship of all types of training include:

- (1) Clients with Prior Work Experience:
 - (A) If the client's disability creates impediments to performance in the client's current or previous occupation and the client does not possess transferable work skills that will match requirements of a new occupation, the client may be considered for sponsorship of training.
 - (B) If the client's disability is such that it does not interfere with satisfactory performance in the current or previous occupation, the client shall not be considered for sponsorship of training.
- (2) Clients with No Prior Work Experience:
 - (A) If the client's disability will place the client at a greater disadvantage in securing employment than peers who are not disabled, the client may be considered for sponsorship of training.
 - (B) If the client's disability is expected to prevent the client from holding employment compatible with the client's capabilities, the client may be considered for sponsorship of training.
- (3) Clients who were previously precluded from maximizing their potential for employment due to impediments caused by their disability may be considered for further training contingent upon the job choice.
- (4) Based on objective data and input from the client, the Division shall determine that the individual has the capacity to perform the essential functions of the job upon completion of training.
- (5) The client and counselor shall complete an Individualized Plan for Employment (IPE) in which the job choice requires the training.

(d) Postsecondary Training

- (1) In addition to meeting the general requirements for sponsorship of training specified in Paragraphs (b) and (c) of this Rule, a client shall meet the following requirements for the Division to sponsor postsecondary training:
 - (A) The Division shall obtain, analyze, and include in the client record objective data that ensures that the client is capable of successfully completing the training program. Sources of data may include, but not be limited to, SAT scores, placement test scores, secondary transcripts

for those just out of high school, previous postsecondary transcripts, vocational evaluations and other psychometric assessments.

- (B) Attendance Requirements:
- (i) The client shall attend the training program on a full-time basis.
 - (ii) If there are factors related to the client's disability or need to work that may interfere with full-time attendance as defined by the training program, part-time attendance may be authorized if the counselor submits justification and the unit manager approves part-time attendance.
 - (iii) The unit manager may approve extension of a community college program from four to five semesters and extension of a college or university program from eight to ten semesters. The unit manager may approve attendance at summer school if such attendance will decrease the number of full-time semesters or quarters necessary to complete the training program. Exceptions regarding attendance beyond the limits set in this paragraph shall be approved by both the unit manager and the Chief of Operations.
 - (iv) Clients attending postsecondary programs other than a college or university program shall meet the institution's requirements for full-time attendance or secure approval for an exception from the unit manager.
 - (v) If a student drops enough courses to change the course load from full-time to part-time without prior approval of the Division, sponsorship shall be discontinued after the counselor notifies the student at least one quarter or semester before termination. The student may have one grading period to return to full-time status unless an exception has been approved.
- (C) The Division may sponsor a client in a non-degreed curriculum on a limited basis. These courses must be completed as follows:
- (i) The Division may sponsor a client as a "special student" or a student in a "provisional status" when the client cannot be accepted into a degreed program and there is strong evidence that such a plan is feasible according to the postsecondary training policy in Paragraph (d) of this Rule. The Division shall limit the sponsorship to 24 semester hours. Semester hours for these courses shall also be considered part of the 10 semesters for postsecondary training that is the Division's maximum limit.
 - (ii) The Division may sponsor remedial training courses if the client is accepted into a degreed curriculum contingent upon completion of these courses or as a part of a comprehensive assessment as outlined in 34 C.F.R. 361.5(b)(6). The Division shall sponsor no more than three remedial courses over a period of two semesters over the life of the case. An exception may be granted if more courses are needed because the client has a most severe disability and the exception is approved in writing by the Chief of Operations.
- (D) The Division may sponsor clients enrolled in licensed or accredited distance learning programs as specified in 10 NCAC 20D .0207 when such programs are not available through traditional on-campus programs or when the client has special disability-related problems that prevent him or her from participating in an on-campus program. The client's participation in such a program shall be approved in writing by the unit manager. The Division shall not sponsor programs where the entire package or curriculum must be purchased initially. The Division may assist with required software for distance learning but shall purchase computer equipment only as permitted under Rule .0314 of this Section.
- (E) The client shall meet the academic standards imposed by the postsecondary school and demonstrate steady progress toward completion of the training program. If the school does not have specific academic standards for completion of the program, the Division shall require the client to have at a minimum a 2.00 grade point average at entry into the junior year for the agency to continue sponsorship. If the client is in the community college system, he or she shall have a 2.00 average at the end of the second semester or the average required by the school or particular curriculum in order to graduate from the program. In other programs such as proprietary schools, the client shall meet the requirements of each specified progress period that will enable the student to graduate or achieve the competency-based requirements

at regular intervals set by the school. If the client's grades fall below the minimum grade point average or other requirements set in this Paragraph, the counselor shall notify the client of the pending loss of Division assistance at least one quarter or semester before terminating assistance. The client may then have one grading period to improve to an acceptable level. Failure to maintain the prescribed academic standards shall mean the loss of Division assistance with tuition, fees, books, interpreter services, maintenance, personal attendant services, and other authorized services directly related to the course of study.

- (F) Graduate training may be sponsored for those clients who require this level of training to reach the job choice. For those clients who are either in or entering undergraduate school, graduate training shall be included as part of the original or amended IPE and shall be indicated when the client generally declares his or her major in undergraduate school. For those clients who have an undergraduate degree and require graduate training due to their disability, graduate training may be sponsored subject to the unit manager's approval.
- (2) Counselors shall review in-state opportunities and discuss them with the client prior to considering out-of-state vendors. The unit manager shall approve all out-of-state training. Exceptions regarding out-of-state training shall be approved by the Chief of Operations.
- (e) The Division shall not sponsor the following:
 - (1) professional improvement courses (including computer certification courses) after a client has completed the level of training for the job outlined in the original or amended Individual Plan for Employment and secured a job that meets the requirements in the IPE;
 - (2) training at the preparatory school level;
 - (3) training when the client cannot demonstrate that sufficient funds are available from other resources to cover expenses that are not covered by the Division; or
 - (4) programs that decline authorization with semester or incremental payments in favor of purchase as a complete package.

History Note: Authority G.S. 143-545.1; 143.546.1; 34 C.F.R. 361.5(b)(6); 34 C.F.R.; 361.48; 34 C.F.R.; 361.54; P.L. 105-220 s. 103(a); Eff. February 1, 1976; Amended Eff. March 1, 1990; Temporary Amendment Eff. July 3, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0305 MAINTENANCE

(a) Maintenance services may be provided at any time during the rehabilitation process including initial evaluation and extended evaluation. These services are supplementary to other rehabilitation services and shall be provided only to enable clients to derive full benefit from their individualized written rehabilitation programs. Service costs shall be limited to the amount of increased costs or expenses that the rehabilitation program causes the individual or the individual's family. Maintenance services include basic living expenses such as food, shelter, clothing, and other subsistence expenses essential to the achievement of employment and other program objectives.

(b) The Division maintains maximum rates of payment on the amount of funds to be expended on individual clients requiring these services. The rates are based on the projected costs of the services. However, exceptions to these limits may be made by the Division for good cause. The maximum rates of payment may be inspected at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina from 8 a.m. to 5 p.m., Monday through Friday.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42; Eff. February 1, 1976; Amended Eff. May 1, 1990; October 20, 1979; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0306 TRANSPORTATION

(a) Transportation services may be provided at any time during the rehabilitation process including initial evaluation and extended evaluation. These services are supplementary to other rehabilitation services and shall be provided only to enable the client to derive full benefit from other services.

(b) Transportation services may include travel for an attendant or escort of the client, as well as the client, when necessary to enable the client to receive other services. Transportation may be by public or private conveyance depending upon the circumstances of the individual client and the availability and appropriateness of the transportation system.

(c) The Division maintains a limit on the cost of transportation services for a complete vocational rehabilitation program. Exceptions may be made by the Division upon a showing of good cause. The schedule of limits on transportation costs may be inspected at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina between 8 a.m. and 5 p.m., Monday through Friday.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0307 SERVICES TO MEMBERS OF CLIENT'S FAMILY

The Division may provide services to members of a client's family if the client is eligible for services or for extended evaluation and the services to be provided to the family members will aid the client's rehabilitation program, are essential to the program's success, and are not readily available through other agencies.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0308 INTERPRETER SERVICES FOR THE DEAF

(a) Interpreter services for the deaf may be provided at any time during the rehabilitation process including initial evaluation and extended evaluation. These services shall be provided when a client with communication problems is unable to communicate with the counselor or is unable to participate in job placement or training without the assistance of an interpreter.

(b) The Division will pay for interpreter services of a Division-approved interpreter at a rate of payment reflecting competence and certification. The Division maintains an ascending pay scale reflecting the qualifications of interpreters. This pay scale may be inspected at the Division's State office, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina, from 8 a.m. to 5 p.m., Monday through Friday.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0309 READER SERVICES AND MOBILITY SERVICES FOR THE BLIND

Reader services and mobility services for the blind are generally provided under a separate state plan for vocational rehabilitation by the Division of Services for the Blind. The Division of Vocational Rehabilitation Services may provide such services to a client upon referral from the Division of Services for the Blind if the client also meets the eligibility requirements of the Division of Vocational Rehabilitation Services.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0310 TELECOMMUNICATION, SENSORY, AND OTHER TECHNOLOGICAL AIDS

Telecommunication, sensory, and other technological aids and devices may be provided to clients who are eligible for services or for extended evaluation. These services are available to aid the client in securing employment and completing the rehabilitation program.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;

Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0311 RECRUITMENT AND TRAINING SERVICES

Recruitment and training services may be provided to clients who are eligible for rehabilitation services or for extended evaluation. On-the-job training or college training may be provided in the fields of rehabilitation, health, welfare, public safety, and law enforcement and in other public service fields.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0312 PLACEMENT

Placement services may be provided to clients who have been determined eligible for vocational rehabilitation services. Services shall be provided either directly by the Division or through other public employment services.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0313 POST-EMPLOYMENT SERVICES

Post-employment services may be provided to clients who have been determined eligible for a program of rehabilitation services and have been successfully rehabilitated into employment. Post-employment services shall be available when needed by the individual to maintain or regain suitable employment.

History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0314 OCCUPATIONAL LICENSES, TOOLS, EQUIPMENT, AND SUPPLIES

- (a) Assistance in obtaining occupational licenses, tools, equipment, initial stocks and supplies may be provided to clients determined eligible for rehabilitation services. Occupational licenses, permits, or other forms of written authority required by state, county, city or other government units in order for clients to participate in employment may be included, but privilege licenses shall not be included. Occupational tools or other placement equipment and supplies, including livestock, may be provided to the extent necessary for suitable and practical placement of the client.
- (b) The Division may assist in the purchase of computers if assistive technology is required by the client for purposes of augmentative communication, environmental controls, or when voice recognition or equivalent adaptive input devices are required for the individual to complete the IPE/IPIL.
- (c) The Division shall not purchase upgrades or improved versions of assistive technology unless the progression of the individual's disability requires such an upgrade.
- (d) Division assistance with software shall be limited to five hundred dollars (\$500.00) unless the software is required for the purposes outlined in Paragraph (b) of this Rule.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.48;
Eff. February 1, 1976;
Temporary Amendment July 3, 2001;
Amended Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0315 REHABILITATION ENGINEERING SERVICES

Rehabilitation engineering technology services shall be provided to applicants and clients to the extent necessary to assist them in accessing vocational rehabilitation services and in accomplishing their vocational rehabilitation goal. Applicants

shall be evaluated to determine their need for engineering technology services. Clients eligible for vocational rehabilitation services or extended evaluation shall be provided engineering technology services, as appropriate, as a part of their individualized written rehabilitation program, to overcome or reduce barriers in training, employment, transportation, and independent living.

*History Note: Authority G.S. 143-546; 143B-10(j); 34 C.F.R. 361.42;
Eff. February 1, 1976;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89C .0316 OTHER GOODS AND SERVICES

(a) Modification of a client's residence or vehicle is limited as follows:

- (1) A limit of twelve thousand dollars (\$12,000) shall be placed on modification projects when the residence is owned by the client or the client's immediate family.
- (2) Modifications to a mobile home owned by the client or the client's family which is located on land owned by the client or client's family, except for those situations where exterior modifications are not permanently affixed to a parcel of rented or leased land and are moveable with the mobile home, shall not exceed eight thousand five hundred dollars (\$8,500) per project. Modifications to a mobile home not meeting the ownership and land ownership requirements stated in this Paragraph shall not exceed five thousand five hundred dollars (\$5,500) per project.
- (3) Modifications to rented or leased residences shall not exceed five thousand five hundred dollars (\$5,500) per project.
- (4) The limitations indicated in (1) through (3) of this Paragraph apply unless a higher amount is needed to meet the cost of unforeseen structural damage needing repair or adaptive equipment and related assistive technology and devices necessary:
 - (A) to accommodate the individual's degree of disability, and
 - (B) to enable the individual to complete the rehabilitation program or meet the goals of the independent living program.

Amounts exceeding the limitations must be approved by the Division's Modification Review Committee.

(b) Job site modifications shall not exceed seven thousand dollars (\$7,000) per client unless the vocational placement requires adaptive equipment which necessitates extensive physical site changes that warrant a higher amount which must be approved by the Division's Modification Review Committee (MRC).

(c) The Independent Living Program of the Division may assist with the modification of a client or family-owned/leased-to-purchase vehicle in order to enhance the client's ability to function independently in the family or to actively participate in the community. The Vocational Rehabilitation Program of the Division may assist with the modification of a client or family-owned/leased-to-purchase vehicle for employment purposes or to assist a client enrolled in a college training program. Other options such as public transportation or family assistance shall be used when available. The following conditions and limitations apply:

- (1) Modifications shall not be considered for clients in secondary school programs unless the individual is a client of the Independent Living Rehabilitation Program.
- (2) Modifications for postsecondary training may be considered only:
 - (A) when the client is a full-time student with satisfactory grades and personal transportation is required as part of the training curriculum; or
 - (B) when the client must live off campus because the college has no, or only limited, on-campus housing.
- (3) The Division shall require an evaluation of any used vehicle by a certified mechanic or a dealership to verify that the vehicle is in good repair. The rehabilitation engineer shall certify that the vehicle will accommodate the needed modifications.
- (4) Division ownership of the modifications shall be secured through a signed Security Agreement.

(d) The Vocational Rehabilitation Program may contribute to the cost of purchasing a vehicle for modification purposes for eligible clients with the most severe disabilities under the following conditions and limitations:

- (1) The Program shall not contribute to the purchase of more than one vehicle for any individual.
- (2) The Program shall select the most cost effective method, based on the recommendation of the Rehabilitation Engineer, to secure a vehicle that meets the modification requirements of the individual.
- (3) The vehicle must be titled to or in the process of being purchased through a lease-to-purchase arrangement by either the client or the client's immediate family.

- (4) The Program shall contribute to the purchase of a vehicle only when a vehicle is required to accomplish the employment goal of the individual which must be at or above the substantial gainful activity (SGA) level as defined by Social Security Administration.
 - (5) A comprehensive review of other financial resources must be conducted by the client and counselor detailing the plan for purchasing, insuring, and maintaining the vehicle.
 - (6) The client must contribute a minimum of 50 percent of the initial purchase cost of the vehicle.
 - (7) All vehicle purchases shall be approved by the Modification Review Committee. The Modification Review Committee may grant an exception to any of the provisions of this Paragraph only upon the written recommendation of the appropriate regional director of the Division which shall indicate why the exception is needed in relation to the individual's particular disability and employment goal.
- (e) Other goods and services not specifically mentioned in the rules in this Section may be provided to clients who are eligible for services if necessary to enable them to become employable or, in the case of the Independent Living Program, to live independently. The other services shall not include the purchase of land or the purchase or construction of a building.

*History Note: Authority G.S. 143-545A; 143-546A; 34 C.F.R. 361.42;
Eff. May 1, 1990;
Amended Eff. February 1, 1996; October 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

SECTION .0400 - METHODS TO ASSURE NONDISCRIMINATION

10A NCAC 89C .0401 COMPLIANCE WITH FEDERAL REQUIREMENTS

- (a) The Division shall administer its program of services in compliance with the provisions of federal statutes and regulations regarding nondiscrimination as outlined in 34 C.F.R. 76.500. No person shall be excluded on the basis of race, color, national origin, sex, age or handicap from participation in, or receiving the benefits of, any care or service provided by the Division. This includes services rendered directly by the Division and those arranged for by the Division and provided by a vendor as part of an individualized written rehabilitation program.
- (b) The Division shall not approve any application for or make any expenditure for the establishment of a workshop or rehabilitation facility or for the acquisition of initial equipment until the applicant signs an assurance of compliance form indicating that the facility will be operated in compliance with Title VI of the Civil Rights Act of 1964.

*History Note: Authority G.S. 143-546; 34 C.F.R. 76.500;
Eff. February 1, 1976;
Amended Eff. July 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89C .0402 VENDOR COMPLIANCE

- (a) The Division shall use only those training vendors, treatment vendors, community rehabilitation program vendors, and room and board vendors who have been approved by the Division and determined to be in compliance with Title VI of the Civil Rights Act of 1964. Vendors may request approval or the Division may request that a vendor or facility consider serving Division clients. In either case, a staff member of the Division shall conduct an on-site vendor review to determine that the vendor is in compliance with Title VI of the Civil Rights Act of 1964. In addition, the vendor shall sign an assurance of compliance form indicating that services will be provided in compliance with Title VI of the Civil Rights Act of 1964.
- (b) Out-of-state vendors may be added to the Division's list of approved vendors upon certification from the respective state's Division of Vocational Rehabilitation Services that the vendor is in compliance with Title VI of the Civil Rights Act of 1964.
- (c) Vendors who wish to be added to the Division's list of those in compliance with Title VI of the Civil Rights Act of 1964 shall contact:

Section Chief, Program Policy, Planning, and Evaluation
Division of Vocational Rehabilitation Services
805 Ruggles Drive
2801 Mail Service Center
Raleigh, North Carolina 27699-2801

History Note: Authority G.S. 143-546; 34 C.F.R. 76.500;
Eff. February 1, 1976;
Amended Eff. March 1, 2007; July 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0403 RESOLVING AREAS OF NON-COMPLIANCE

(a) If Division staff determines that an approved vendor is not in compliance with Title VI of the Civil Rights Act of 1964, the Division shall inform the vendor of the area of non-compliance. The vendor shall agree to a plan to correct the areas of non-compliance.

(b) The Division shall monitor implementation of the plan. If the vendor fails to correct the area of non-compliance the Division shall remove the vendor from the list of approved vendors.

History Note: Authority G.S. 143-546; 34 C.F.R. 76.500;
Eff. February 1, 1976;
Amended Eff. July 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0404 COMPLAINTS

(a) The interviewing rehabilitation counselor or other designated staff member shall inform applicants and clients that services, financial aid, and other benefits of the program are provided on a non-discriminatory basis, as required by the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. They shall also be informed of their right to file a complaint if they believe that discrimination is taking place in violation of the Federal statutes or regulations.

(b) All complaints concerning discrimination shall be filed in writing, shall describe the type of discrimination alleged, and shall indicate when and where such discrimination took place, including any pertinent facts and circumstances surrounding the alleged discrimination.

(c) The complaint shall be signed by the person making it and shall be addressed to the U.S. Department of Education, Office For Civil Rights, Region IV, P. O. Box 2048, Atlanta, Georgia 30301.

History Note: Authority G.S. 143-546; 34 C.F.R. 76.500;
Eff. February 1, 1976;
Amended Eff. July 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0500 - SUPPORTED EMPLOYMENT SERVICES

10A NCAC 89C .0501 COMPLIANCE WITH FEDERAL REQUIREMENTS

(a) The Division shall administer its Supported Employment Program in compliance with the provisions of federal regulations 34 C.F.R. Part 363 which are incorporated by reference.

(b) The Code of Federal Regulations incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of 34 C.F.R. Part 363 may be obtained at no cost from the Division.

History Note: Authority G.S. 143-545; 143-546; 150B-21.6; 34 C.F.R. Part 363;
Eff. October 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0502 ELIGIBILITY AND MOST SIGNIFICANT DISABILITY

The Supported Employment Program shall serve only those individuals with the most significant disabilities as defined in 10A NCAC 89A.0102.

History Note: Authority G.S. 143-545; 143-546; 34 C.F.R. 363.3;
Eff. October 1, 1994;
Amended Eff. March 1, 2007;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0600 - ORDER OF SELECTION FOR SERVICES

10A NCAC 89C .0601 APPLICABILITY OF POLICY

The rules in this Section specify the order of selection for services that shall be followed by the Division in its general program when it does not have the financial or staff resources to serve all eligible individuals who apply for services. The rules do not apply to the Independent Living Program. The rules do not apply if an order of selection for services has not been implemented by the Division Director.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36;
Eff. October 1, 1994;
Amended Eff. July 1, 1998;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0602 IMPLEMENTATION OF ORDER OF SELECTION

- (a) The Division Director shall make a determination of the necessity for implementing the order of selection specified in these Rules.
- (b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis and the Director shall also determine how many priority categories can be served within available resources and notify Division staff of this decision.
- (c) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services as appropriate of its decision to implement an order of selection.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36;
Eff. October 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0603 PRIORITY CATEGORIES

- (a) The Division shall determine each individual's priority category at the time the individual is determined eligible for services. The eligible individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.
- (b) The Division shall notify each eligible individual of his/her priority classification in writing at the same time the notification of eligibility is provided.
- (c) The priority categories for order of selection for services for eligible individuals are as follows:
 - (1) Category One: Individuals with a most significant (MSD) disability who are seriously limited in four functional capacity areas;
 - (2) Category Two: Individuals with a most significant disability (MSD) who are seriously limited in three functional capacity areas;
 - (3) Category Three: Individuals with a significant disability (SD) who are seriously limited in two functional capacity areas;
 - (4) Category Four: Individuals with a significant disability (SD) who are seriously limited in one functional capacity area;
 - (5) Category Five: Individuals with a non-significant and permanent disability that results in permanent functional limitations and who will require multiple vocational rehabilitation services to obtain an employment outcome; and
 - (6) Category Six: Any eligible individual who does not qualify for placement in a higher category.
- (d) The Division shall change a client's priority classification immediately if there are changes in the client's significance of disability as evidenced by a review of medical information that warrants a change in the client's priority category classification. The Division shall notify the client in writing of any change in priority classification.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36;
Eff. October 1, 1994;
Amended Eff. July 1, 1998; April 1, 1997;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0604 PROCEDURES

- (a) The Division Director upon determining that the Division does not have sufficient resources to provide services to all eligible individuals shall implement an Order of Selection.
- (b) The Division Director shall set the date for statewide implementation of an Order of Selection and provide written notification to Division staff, all cooperative programs and vendors.
- (c) Eligible individuals who are already receiving services under an Individualized Plan for Employment (IPE) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs shall continue until their records of service are closed.
- (d) When an Order of Selection is implemented, the Division shall provide written notification to all eligible individuals assigned to a priority category who do not have a signed Individualized Plan for Employment (IPE).
- (e) In determining an eligible individual's priority category for order of selection as set out in Rule .0603 of this Section, Division staff shall review existing data regarding the seriousness of limitations in functional capacity areas as related to the individual's disability(ies) and the problems those limitations pose in terms of an employment outcome.
- (f) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order down through Priority Category Six according to the availability of resources. Within each category an individual's rank in that category is determined by the individual's application date. The individual that applies first is served first.
- (g) Individuals in applicant status prior to implementation of the order of selection and whose priority category classification is below the categories accepted for services when the individuals are determined eligible shall be placed on a waiting list until their priority category is opened for services.
- (h) Individuals determined eligible after the order of selection for services is implemented shall receive services if they are classified in the categories accepted for services or shall be placed on a waiting list if their classification places them in a category not currently being served.
- (i) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Plan for Employment prior to the implementation of the order of selection and whose classification is below the categories accepted for service shall be placed on a waiting list.
- (j) When the order of selection is implemented, all individuals whose priority category classification places those individuals on a waiting list shall be notified in writing of their status. When services are made available to any category in which individuals are on a waiting list, the Division shall notify individuals in that priority category that their rehabilitation program can be developed and implemented.
- (k) When the Division Director has determined that the Division has sufficient resources to serve all eligible individuals, the Division shall provide written notification to all eligible individuals, Division staff, all cooperative programs and vendors on the waiting list, that the implementation of an order of selection has ended.
- (l) The Division shall provide services to all priority categories when the implementation of an order of selection has ended.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36;
Eff. October 1, 1994;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0605 POST EMPLOYMENT SERVICES

When a former client requires post-employment services and is otherwise eligible for such services, the services shall be provided without regard for the order of selection.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.36;
Eff. October 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0606 CASE FINDING AND INFORMATION AND REFERRAL PROGRAMS

(a) Case finding efforts shall not be modified because of an order of selection. The Division has a continuing responsibility to make the public and referral sources aware of the services it has to offer eligible individuals with disabilities, especially those with significant or most significant disabilities. Referral sources shall be informed of an

existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

(b) The Division shall implement an information and referral program adequate to ensure that individuals with disabilities, including eligible individuals with disabilities who do not meet the Division's order of selection criteria for acceptance of services, are provided accurate vocational rehabilitation information and guidance which may include counseling and referral for job placement using appropriate mode of communication to assist them in preparing for, securing, retaining, or regaining employment.

History Note: Authority G.S. 143-545.1; 143-546.1; P.L. 102-569, s. 101(a)(5)(A); 34 C.F.R. 361.37;
Eff. October 1, 1994;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. January 26, 2003; May 1, 2002;
Amended Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89C .0607 THIRD-PARTY FUNDING ARRANGEMENTS

The Division shall ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection.

History Note: Authority G.S. 143-545A; 143-546A; P.L. 102-569, s. 101(a)(5)(A);
Eff. October 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SUBCHAPTER 89D - STANDARDS FOR FACILITIES AND PROVIDERS

SECTION .0100 - GENERAL POLICIES

10A NCAC 89D .0101 GENERAL POLICIES

The Division shall use, whenever feasible, facilities and providers of services who are accredited by a public authority or professional organizations that grants accreditation in the related program area or areas of service provided. Providers of community rehabilitation program services shall be accredited by an entity approved by the Division. In other cases, facilities shall be selected on the condition that they appear upon investigation to be best adapted to render the specific services required. Questions from the general public with regards to these standards may be directed in writing to:

Director
Division of Vocational Rehabilitation Services
805 Ruggles Drive
2801 Mail Service Center
Raleigh, North Carolina 27699-2801

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Amended Eff. April 1, 2007; July 1, 1990; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0200 - STANDARDS FOR FACILITIES

10A NCAC 89D .0201 TYPES OF FACILITIES AND GENERAL REQUIREMENTS

(a) It is the policy of the Division of Vocational Rehabilitation Services to use whenever feasible facilities that are accredited by the appropriate public authority or professional organization. Facilities are selected for use in providing the client's rehabilitation program based on the individualized rehabilitation needs of the client. Facilities may include hospitals, convalescent and nursing homes, rehabilitation centers, colleges, universities, community colleges and technical schools, community rehabilitation programs, and many others as needed by the client.

(b) Any facility in which vocational rehabilitation services are provided and any provider of vocational rehabilitation services shall meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51.

*History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.51;
Eff. February 1, 1976;
Amended Eff. April 1, 2001;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89D .0202 HOSPITAL STANDARDS

(a) Hospitals shall currently be certified to participate in the medicare and medicaid programs by the Department of Health and Human Services, Division of Health Service Regulation, or shall hold an accreditation from the Joint Commission on Accreditation of Hospitals.

(b) Hospitals shall be served (within a 25 mile radius) by at least a surgeon and an internist or a board certified family practitioner who is eligible and willing to serve on the agency's panel of physicians and provide care to vocational rehabilitation clients.

*History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Amended Eff. July 1, 1990;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89D .0203 CONVALESCENT AND NURSING HOME STANDARDS

The Division of Vocational Rehabilitation Services utilizes convalescent and nursing homes that are licensed or certified by the Department of Health and Human Services, Division of Health Service Regulation.

*History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89D .0204 COMMUNITY REHABILITATION PROGRAM STANDARDS

(a) The following definitions apply to the terms as used in this Rule:

- (1) "Community rehabilitation program" means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:
 - (A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.
 - (B) Testing, fitting, or training in the use of prosthetic and orthotic devices.
 - (C) Recreational therapy.
 - (D) Physical and occupational therapy.
 - (E) Speech, language, and hearing therapy.
 - (F) Psychiatric, psychological, and social services, including positive behavior management.
 - (G) Assessment for determining eligibility and vocational rehabilitation needs.
 - (H) Rehabilitation technology.
 - (I) Job development, placement, and retention services.
 - (J) Evaluation or control of specific disabilities.
 - (K) Orientation and mobility services for individuals who are blind.
 - (L) Extended employment.
 - (M) Psychosocial rehabilitation services.
 - (N) Supported employment services and extended services.
 - (O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.
 - (P) Personal assistance services.
 - (Q) Services similar to the services described in Subparagraph (A) through (P) of this Paragraph.
 - (R) Trial Work.
- (2) "Conflict of Interest" means an actual or perceived interest by a staff member of the Division or the vendor or potential vendor, a board member or immediate family for either party in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when any individual as defined has a direct or fiduciary interest in another

relationship. The definition of conflict of interest shall include any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group.

- (3) "Fee for service funding" means an hourly rate, fee for service method of funding in which an hourly cost of providing the service is identified and the program is reimbursed based on the number of hours of actual services provided.
- (4) "Noncompliance" means a failure by a vendor to comply with rules.
- (5) "Outcome –Based Client Services and Reimbursement" means payment is made to the vendor based upon the Division's benchmark rate established pursuant to 10A NCAC 89C .0103. A payment is made for each benefit or outcome achieved that the vendor contracts with the Division to provide.
- (6) "Qualified Personnel" means staff who perform the primary job functions as stipulated by the accreditation body and who are trained to perform the job tasks. Qualified personnel or staff for a provider applying for vendorship with the Division is further defined as having a minimum of three years experience in the area of service for which the provider is applying for vendorship or other required business areas of the services.
- (7) "Serious findings" means those areas of noncompliance that may affect the safety, health or well-being of clients; those that appear to be violations of the law; and those which deny the client quality services in accordance with the law and rules.
- (8) "Vendor" means a provider of services which has complied with the Division's rules, and is authorized to provide services to clients of the Division.

(b) Statement of Policy:

- (1) Approved community rehabilitation program vendors shall meet and adhere to the standards in Paragraph (c) of this Rule in terms of management, operations and client service delivery.
- (2) The inclusion of a provider of community rehabilitation services on the Division's list of approved vendors shall not commit the Division to utilize the available services.
- (3) The Division shall not provide any provider of community rehabilitation services with a guarantee of a total dollar commitment or number of total client referrals during any specific time frame except if determined as a condition of a federal grant or a contract.
- (4) Any provider approved as a new vendor shall agree to a fee for service rate of payment.
- (5) Any vendor shall have to meet the following criteria to change payment from fee for service to Outcome reimbursement:
 - (A) Accreditation as defined in this Rule.
 - (B) A five year business relationship with the Division.
 - (C) Adherence to all standards for community rehabilitation programs set forth in this Rule without documentation of serious findings.
 - (D) Three year average expenditures at or above the level agreed upon by the Division and CRPs and funds are available.
 - (E) Achievement at or above the annual program outcome levels agreed on between the Division and the community rehabilitation program.
 - (F) Letter from the Division Regional Director indicating that there is a client service need that can be met by the provider.

If the above criteria in (A)-(F) are met, the Division shall allow the vendor to move to Outcome-based funding.

- (6) The provider, if providing supported employment services, shall provide for extended services, ongoing support services and continuous or periodic job skill training services provided at least twice monthly at the work site unless the consumer's Individualized Plan for Employment provides for off-site monitoring. Other support services provided at or away from the work site, such as transportation, personal car services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site. The provider shall make known the plan for extended services to the Division.
- (7) Community rehabilitation programs and other providers of rehabilitation services shall have qualified personnel, a safe environment, have obtained applicable state and federal licenses, meet the program accessibility and special communication requirements specified in 34 C.F.R. 361.51, and provide services designed to enable individuals with disabilities to have access to employment.
- (8) A vendor shall not subcontract any of the services under the approved vendorship.

(c) The following standards shall apply to existing vendors and providers of community rehabilitation program services applying to be a vendor:

- (1) Accreditation: The Division shall utilize only those community rehabilitation programs that meet the following accreditation options:
 - (A) Existing vendors as of the date of the last amendment to this Rule must be accredited by The Commission on Accreditation of Rehabilitation Facilities (CARF); the Council on Accreditation (COA); or the Council on Quality Leadership (COL). In lieu of current accreditation or pending approval for accreditation, a vendor shall provide evidence of training regarding accreditation within one year of the last rule amendment and be granted accreditation within three years.
 - (B) Community rehabilitation programs applying to be a vendor shall be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation (COA) or the Council on Quality Leadership (COL). In lieu of current accreditation or pending approval for accreditation at the time of application for vendorship, a vendor shall provide evidence of training regarding accreditation before approval as vendor or; evidence of training regarding accreditation is required within one year of vendor application with accreditation rendered within three years.
- (2) The community rehabilitation program that is an approved vendor shall maintain accreditation in the area of approved vendorship. A copy of the accreditation shall be submitted to the Division.
- (3) Accessibility and nondiscrimination standards. Each community rehabilitation program shall comply with the accessibility and nondiscrimination standards set forth in federal and state law. The agency may deny funding to and refuse to contract with any community rehabilitation program which fails to comply with such provisions.
- (4) Compliance with applicable laws:
 - (A) The provider shall be a legally constituted entity under federal, state, and local statute(s). The nature of the entity shall be described in its constitution and its operating principles shall be prescribed by its bylaws.
 - (B) The provider shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of business, including those of federal, state, and local agencies having jurisdiction or authority.
 - (C) Affirmative action. The State plan must assure that community rehabilitation programs that receive assistance under part B of Title I of the Rehabilitation Act as amended take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.
- (5) Health and Safety Standards:
 - (A) The community rehabilitation program shall assure that every individual served receives services in an environment that is free of health and safety hazards.
 - (B) With respect to substances which have been identified by federal or state agencies to be toxic or hazardous, but for which no level of safe exposure to such substances has been determined, the program shall not permit the use or storage of such substances within its premises.
 - (C) In situations in which a community rehabilitation program uses locations, other than those of the program, for trial work, for transitional employment, or for any other purpose, it shall assure that such location is in compliance with the provisions of this rule.
 - (D) The community rehabilitation program shall meet all applicable governmental requirements, including OSHA standards from the Department of Labor and, have an internal health and safety program.
- (6) Work Standards:
 - (A) The community rehabilitation program shall establish production and payment practices for individuals with disabilities which maximize earning potential.
 - (B) The community rehabilitation program shall maintain all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor rules and regulations governing wage reimbursement and the Workers' Compensation Act.
- (7) Insurance Standard.
 - (A) The community rehabilitation program shall have insurance to protect assets and to ensure compensation for staff and individuals with disabilities in the event such compensation would be required for occurrences for which the community rehabilitation program is liable. There shall be documentation that the governing body of the community rehabilitation program

- reviews the insurance profile annually after consultation with professional insurance representatives.
- (8) (B) The community rehabilitation program shall maintain workers' compensation insurance.
Physical Accessibility Standard:
 - (A) The community rehabilitation program shall comply with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in 41 CFR Part 101-19.6, the American National Standards Institute No. A117-1-1986; and
 - (B) The community rehabilitation program shall comply with applicable sections of the Americans with Disabilities Act (ADA).
 - (9) Organizational Standard:
 - (A) The community rehabilitation program shall be structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan.
 - (B) The community rehabilitation program shall maintain written policy and administrative records, which are available for review by Division staff.
 - (C) The community rehabilitation program shall monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.
 - (D) Providers of service applying to be a vendor shall have a minimum of three years of experience as a provider in the area of service delivery for which the provider is seeking approval or staff having a minimum of three years experience in the area of service for which the provider is applying to be a vendor or other required business areas of services.
 - (E) The community rehabilitation program shall ensure that real or apparent conflict of interest between a member of the organization is disclosed and remedied. Failure to disclose or remedy may result in termination of the vendor approval.
 - (10) Fiscal Management Standard:
 - (A) Fiscal affairs relative to provision of rehabilitation services shall be managed in a manner consistent with the stated purposes and in accordance with legal requirements, including assurances that any state or federal audit and reporting requirements are met.
 - (B) The community rehabilitation program shall operate under an annual budget approved by its governing body.
 - (C) Community rehabilitation programs providing supported employment services shall provide the Division with information regarding the funding source for each individual's extended services program.
 - (11) Personnel Standard:
 - (A) As applicable, the community rehabilitation program shall maintain qualified personnel and written organizational personnel policies which support the provision of services essential to the achievement of defined individual and program goals.
 - (B) The community rehabilitation program shall maintain professional and business licensure or certification required for the type of program or service(s) provided to clients.
 - (12) Program Management Standard:
 - (A) The community rehabilitation program shall ensure that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration, and productivity as identified within each Individualized Plan for Employment and through client participation in service planning, implementation and evaluation.
 - (B) The community rehabilitation program shall have policies and follow procedures designed to promote and document client input in program development and each client's involvement in planning his or her own program.
 - (C) The community rehabilitation program shall maintain the confidentiality of all medical, psychological, and other consumer information shared with it by the Division.
 - (D) The community rehabilitation program shall provide for meetings with Division staff during the time the client is being served inclusive of admission or pre-admission meetings to review the client's progress.
 - (E) The community rehabilitation program shall provide reports of services and results to the Division at completion or as otherwise agreed upon.

- (F) The community rehabilitation program shall use language or mode of communication most compatible with the individual client's abilities and culture.
 - (G) Community rehabilitation programs explicitly designed to serve those people with the most significant disabilities such as supported employment programs shall provide ongoing support services over an extended period of time to maintain their employment, with no end date or time limit placed on this assistance.
 - (H) Providers applying to be a vendor shall demonstrate a record of success as defined in this rule in the area of service delivery for which the provider is seeking approval.
- (13) Program Evaluation Standard:
- (A) The community rehabilitation program shall establish a program evaluation and reporting system which is used to measure both effectiveness and efficiency and to monitor the results of program.
 - (B) The community rehabilitation program shall provide timely reports to the Division of such information, and by such means, as the Division may require for evaluation of ongoing program effectiveness, costs, and impact of services provided by the provider.
- (d) The Division shall evaluate each provider's ability to ensure compliance with each of the standards that, for the purposes of the rules in this Chapter, apply to the provider and type of service provision being approved.
- (e) Any vendor approved prior to the effective date of this amended rule shall not have to submit a new vendor application.
- (f) Any service provider interested in providing community rehabilitation program services after the effective date of this amended Rule shall adhere to the following procedures:
- (1) The provider shall obtain a vendor application packet from the Division's website or shall request the vendor application packet from the Division.
 - (2) The vendor application packet shall include:
 - (A) the application for vendorship; and
 - (B) the criteria and procedures for review and approval.
 - (3) The provider shall complete the vendor application forms and submit all required documentation to the Division. This shall include a recommendation from Division staff or other source such as a local management entity (LME), another vendor, or professional organization.
 - (4) Once the application has been reviewed and checked for accuracy and completion, an on site vendor review shall be conducted by staff of the Division.
 - (5) Within 30 days, the vendor shall be contacted either to provide additional information or clarification or to complete the process.
 - (6) If the application is disapproved, a letter of explanation shall be sent to the vendor. Applications may be disapproved for failure to submit required information, or failure of the vendor to agree to the standards and requirements set forth in this Rule to provide quality services to the Division's clients.
- (g) The vendor shall provide accurate information describing vendored services and shall maintain accurate documentation of the costs of delivery of each service.
- (h) The vendor shall have record keeping capabilities to identify each consumer as an individual, how many units of a service during any given month that consumer received, and provide accurate bills and reports that reflect the actual services delivered to that consumer.
- (i) The vendor shall submit to the Division invoices for Division authorized services on Division form(s) monthly.
- (j) The vendor shall report to the Division any significant changes in the proposed delivery of services from that stated in the approved application. These include, changes in personnel and ability to deliver anticipated volumes of services. Budgetary changes shall also be reported as they occur.
- (k) Vendors shall be monitored at a minimum of annually by the Division for assurance of compliance with the standards. Written reports shall be submitted to the vendor outlining the findings of monitoring.
- (l) Noncompliance:
- (1) For findings of noncompliance as determined by Division staff responsible for monitoring, the vendor must submit a written corrective action plan including timelines to the Division.
 - (2) Serious findings may result in suspension of use of the vendor by the Division until the vendor has completed corrective action.
 - (3) The Division shall inform the provider in writing of the acceptance of completed corrective actions, closing out the plan.
 - (4) Within 120 days of the services provided by the vendor shall be reviewed by Division staff to ensure services are being provided in compliance with applicable standards. The vendor may appeal any

disputes which cannot be settled by submitting a written statement of appeal describing the situation and submitted to the Division director. After investigating the dispute, the Division Director shall send a written decision to the provider and retain a copy for the file along with all documents related to the appeal.

(m) Either the vendor or the Division may terminate the vendor relationship upon a minimum of a 30 day written notice by either party or immediately upon notification of serious findings.

*History Note: Authority G.S. 143-545.1; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Amended Eff. April 1, 2007; July 1, 1997; October 20, 1979;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89D .0205 SPEECH AND HEARING CENTERS STANDARDS

The Division of Vocational Rehabilitation Services utilizes speech and hearing centers that in addition to meeting minimum standards for equipment, have staff which have been licensed by the State Board of Examiners for Speech and Language Pathology and Audiology. Minimum standards for equipment include:

- (1) A sound treated test room separated from the tester and testing equipment;
- (2) An audiometer with a pure tone range of at least 250 Hz to 8000 Hz to include 500, 1000, 2000, 4000 Hz;
- (3) Calibration of equipment; and
- (4) It is desirable to have:
 - (a) Impedance audiometry,
 - (b) Bekesey,
 - (c) ABLE,
 - (d) SISI,
 - (e) Tone decay.

*History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

10A NCAC 89D .0206 STANDARDS FOR POSTSECONDARY TRAINING FACILITIES

(a) Except for the facilities indicated in Paragraph (b) of this Rule, the Division shall utilize only those in-State postsecondary training facilities that are licensed by, or have their program approved by, one of the following:

- (1) Board of Governors of the University of North Carolina (G.S. 116-15);
- (2) Office of Proprietary Schools, N.C. Department of Community Colleges (Article 8 of G.S. 115D);
- (3) NC Board of Barber Examiners (G.S. 86A-22);
- (4) NC Division of Motor Vehicles (G.S. Chapter 20, Article 14 Commercial Driver Training Schools);
- (5) NC Board of Cosmetic Art Examiners (G.S. 88B-16);
- (6) NC Division of Health Service Regulation – Nurse's Aide I Programs (G.S. 131E-104);
- (7) NC Board of Nursing – Nurse's Aide II Programs (G.S. 90-171.55);
- (8) NC Appraisal Board [G.S. 93E-1-10];
- (9) NC Real Estate Commission [G.S. 93A-4(d)];
- (10) NC Board of Massage and Body Work Therapy, [G.S. 90-631]; or
- (11) Other licensure boards for which a training facility or program has written verification that the licensure board is the appropriate licensing body and from which the facility or program holds a current license.

(b) The Division may utilize the postsecondary training facilities or programs exempt from licensure under G.S. 115D-88 (1) through (4c) or facilities or programs for which there is no licensing body in the State. However, these facilities or programs shall submit documentation of their approval by an accreditation body. The Division may cease to utilize these facilities or programs when the Division determines that a facility or program fails to meet the individualized rehabilitation needs of vocational rehabilitation clients.

(c) The Division shall use only those out-of-State postsecondary facilities and programs that meet the standards of the public vocational rehabilitation program in that State.

History Note: Authority G.S. 143-545.1; 143-546.1; 34 C.F.R. 361.51;

Eff. April 1, 2001;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0300 - STANDARDS FOR PROVIDERS OF SERVICES

10A NCAC 89D .0301 GENERAL POLICIES

The Division of Vocational Rehabilitation Services maintains standards for the selection of professional and other personnel utilized in providing rehabilitation services to clients. The aim of such standards is to assure a high quality of services. It is the policy of the agency to allow the client to freely choose the physician for diagnostic and treatment services whenever possible and desirable, so long as the chosen physician meets the requirement standards and qualifications of the agency.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;

Eff. February 1, 1976;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0302 MEDICAL SERVICES' PERSONNEL STANDARDS

(a) The Division of Vocational Rehabilitation Services maintains a policy in the provision of specialty medical services of using a medical specialist who holds certificates from the American College of Surgeons or the American Specialty Board where such boards have been established, or physicians who have established eligibility for examination by such boards.

(b) Medical diagnosis and medical treatment are provided to clients only by physicians who are licensed to practice medicine and surgery, are board eligible in their specialty, and are otherwise qualified by training and experience to perform the specific services required.

(c) Dental diagnosis and treatment are provided only by dentists who are licensed to dentistry, dental surgery, and are otherwise qualified by training and experience to perform the specific dental services required.

(d) Personnel providing physical or occupational therapy services are registered or graduates from a school generally accepted by the respective professions as providing quality training and certification by the respective professional organization. When therapists with such qualifications are not available, other experienced therapists may be used.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;

Eff. February 1, 1976;

Amended Eff. October 20, 1979;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0303 SPEECH THERAPISTS AND AUDIOLOGISTS STANDARDS

The Division of Vocational Rehabilitation Services utilizes individuals which have been licensed by the State Board of Examiners for Speech and Language Pathology and Audiology.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;

Eff. February 1, 1976;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0304 PSYCHOLOGISTS STANDARDS

The Division of Vocational Rehabilitation Services utilizes the standards of the licensing authority under the North Carolina Board of Examiners in Professional Psychology, and applies the exemptions under the state statute creating this board as is appropriate.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;

Eff. February 1, 1976;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0305 ON-THE-JOB TRAINING PERSONNEL STANDARDS

The Division of Vocational Rehabilitation Services in its selection of facilities for on-the-job training will use standards based upon the ability of the facility to provide an instructor who has trade competency and experience in training other workers in the operations to be performed. Other factors which are considered include adequate equipment and

instructional materials, a plan of graduated progress in the job to be learned, and an efficiently organized instructional schedule.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0306 HEARING AID DEALERS STANDARDS

The Division of Vocational Rehabilitation Services utilizes hearing aid vendors which have been licensed by the State Board of Hearing Aid Dealers and Fitters.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

10A NCAC 89D .0307 PROSTHETISTS AND ORTHOTISTS

The Division of Vocational Rehabilitation Services requires that all vendors of prosthetic and orthotic appliance be certified by the American Board for Certification in Orthotics and Prosthetics. Additionally, the vendor must have a shop that meets the board's standards for cleanliness, safety, and competence.

History Note: Authority G.S. 143-546; 34 C.F.R. 361.45;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.